



# ***DEBT RECOVERY TACTICS NEWSLETTER***

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## **EDITOR'S NOTE**

Debt simply put means, something owed, and something could be money, goods or services. It could be owed to an individual, firm or the government. When there is debt, and such debt seems unlikely to be paid, the creditor must take steps to ensure the debtor pays back the debt, this process is legally known as debt recovery, and it includes the steps and actions taken by a creditor to regain possession of whatever was borrowed by the debtor.

Owing to the fact that no man is an island, transactions would occur, and as a result of different factors obligations made might not be kept, and this could result in debt, hence debt is sometimes unavoidable.

However it is possible for one to safeguard himself in such a way that provides for effective steps for debt recovery in the instance of debt occurring, it is trite that a transaction is written down or put into contract form, this can be done properly by the help of a lawyer, in a transaction contract, it is important that a debt recovery clause is present, this would set out the terms on how debt should be recovered in the event debt occurs.

If the transaction is not in writing and does not contain a clause for debt recovery, the following options are available to a creditor

- Request for a letter of demand to be written by a competent lawyer, this letter is important as it is the first step to recovering the debt, the letter would usually contain a stipulated time for the debtor to pay back such debt, and a clause stating what would happen (usually legal action) if the debt is not paid within the stipulated period.

A letter of demand should be as explicit as possible, and should contain

***"The last step a creditor can resort to is litigation . "-  
Barrister Obadan Oluwagbeminiyi ,  
LLB, BL.***

every detail for example the details of the transaction, the amount owed, the original day it should have been paid, how much is owed and even how the money should be paid, account details should also be provided.

- Another effective yet legal way to recover debt is by the use of Alternative Dispute Resolution. This is cost effective, saves time and it also preserves whatever relationship exists between the creditor and the borrower. It can be done by calling a mediator to supervise discussions between the parties, another effective means is the Multi door court house which exists in Lagos and Abuja .If the parties wish, the outcome of their mediation can be submitted to court to be delivered as consent judgment and this is binding on both parties as a valid judgment of the court of law.
- The last step a creditor can resort to is litigation. It is important to note that before litigation can occur the above listed step of sending letter of demand should have occurred, and the stipulated time contained in the letter must have elapsed. This involves bringing the matter before a court of law by filing the appropriate processes before the court.

A popular trend in Nigeria is the use of law enforcement agents like the police and the army for the purpose of debt recovery. According to Section 4 of the Police Act which stipulates the functions of the police state that “the police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.”

Nowhere does it allow for the police to arrest debtors, because being a debtor is not a crime in Nigeria.

The above decision is also supported by the judgment of the Court of Appeal in Oceanic Securities International Limited V. Balogun (2012) ALL FWLR Pt. 643 page 1907.

On the contrary the illegal involvement of the Police and other Law Enforcement

agencies can do more damage than good, as their actions may result in; battery, trespass to land, good and chattel, false imprisonment, assault and a host of other civil and criminal wrongs, and this may be detrimental to the creditor should the debtor decide to sue.

## **CONCLUSION**

As earlier stated due to factors beyond a person's control, debt is sometimes unavoidable, the most effective way to salvage a situation of unrecovered debt is to get a competent legal counsel involved from the earliest stage possible, and this would ensure that such debt is recovered within the strict confines of the law.

The GOS Newsletter has been prepared for clients and professional colleagues as a general guide to the subject matter. It is not meant to substitute specialist legal advice about your specific circumstances.

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