



# LEGAL UPDATE

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## Creditor's Statutory Demand for Payment of Debt

By Luma Sherif

Corporations should be aware of the potential danger of not acting promptly if served with a creditor's statutory demand for payment of debt ("statutory demand").

A statutory demand is a fast and effective way to prompt a company to pay its debts because failure to comply with it within 21 days of service provides a basis for the company to be wound up.

A statutory demand is not a court document, so will not contain a court seal and may not at first glance appear important.

A creditor may serve a statutory demand upon a company in respect of a debt if:

1. It has obtained a judgment in a court against that company for an amount exceeding \$2000.00; or
2. It swears an affidavit attached to the statutory demand which states that there is no genuine dispute about the existence or amount of the debt, and that debt exceeds \$2000.00.

It is a requirement that a statutory demand be served on a corporation by:

1. Mailing it to or leaving it at its registered office. (Companies should be mindful that the registered office of a company is often the address of the company's accountant); or
2. Personally upon a director of the company.

A company must take steps to comply with the demand, or bring an application to set it aside, **strictly within 21 days** of service of the demand upon the company. When calculating the 21 day period, there is no extension permitted to allow for weekends or public holidays.

A company may, within 21 days of service of the demand upon it, either pay the party which issued the demand the amount sought in the demand, or seek to set it aside by filing an application in Court setting out the reasons for not paying the amount claimed in the demand. The application must be accompanied by an affidavit

A statutory demand can be set aside for a formal defect causing "substantial injustice" or if the underlying debt is the subject of a dispute or there is an offsetting claim. It is essential that a company wishing to set aside a statutory demand act promptly because



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the affidavit in support of the application to set aside the demand must set out all of the grounds on which the company relies.

If a company served with a statutory demand does not take steps to comply with the statutory demand or set it aside, there will be a presumption at law that the company served with the statutory demand is insolvent, and the creditor may take steps to wind up the company.

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