

SHOULD YOU SEND A DEMAND LETTER BEFORE FILING A LAWSUIT? THE VALUE OF FORMAL DEMAND LETTERS

AUGUST 2026

Executive Summary:

When faced with a breach of contractual obligation, immediately turning to the courts is not always the only—or the best—course of action. A demand letter, when properly structured and tailored to the circumstances of the case, can open the door to a negotiated solution, help clarify the counterparty's position, and strengthen the company's legal and evidentiary position in the event of litigation. However, whether to send one should be strategically assessed in light of the contract, applicable law, and the specific circumstances of the dispute.

When a company is faced with a breach of contractual obligation, one of the first questions that often arises is whether it should immediately turn to the courts and initiate legal proceedings or make one final attempt to communicate with its counterparty. In these situations, sending a formal demand letter can be a useful tool to seek a solution before initiating litigation while, at the same time, laying the groundwork in case litigation ultimately becomes unavoidable.

A demand letter is, in simple terms, a communication through which one party formally puts a breach on record and requests that its counterparty take certain actions to remedy it within a specified period. Depending on the circumstances, this may involve the payment of an outstanding amount, the delivery of certain goods, the performance of a contractual obligation, or even the cessation of conduct considered contrary to the parties' agreement.

Although these communications are sometimes viewed simply as a formality before filing a lawsuit, their usefulness can extend much further.

First, a demand letter can provide one final opportunity to resolve a dispute without going to court. Not every breach comes from a definitive refusal by one party to fulfil its obligations. Sometimes there are liquidity issues, differences over the interpretation of a contract, disagreements regarding the amount owed, or simply a breakdown in communication between the individuals responsible for the business relationship.

A sufficiently clear demand can bring the issue to the attention of individuals with actual decision-making authority and prompt negotiations that may lead to a solution. Even when the requested performance is not immediately obtained, the counterparty's response can help clarify its position, identify the issues that are genuinely in dispute, and more accurately assess whether there is room to reach an agreement.

Consider, for example, a company that has provided services to another company for several months and has several outstanding invoices. Before filing a lawsuit, a letter identifying the unpaid invoices, the corresponding amounts, and a reasonable deadline for payment could lead the debtor to expressly

acknowledge the debt and propose a payment schedule. If the parties reach an agreement, it can be properly documented, avoiding the costs and time associated with litigation.

But the usefulness of these communications is not limited to facilitating negotiations. A demand letter can also play an important role from an evidentiary standpoint.

When a dispute reaches the courts, communications exchanged before litigation may become relevant evidence in reconstructing what occurred between the parties. A response acknowledging an obligation, explaining the reason for a delay, or proposing a date for performance may later become significant. Even the absence of a response may form part of the context in which a judge assesses the parties' conduct, depending on the circumstances of the case.

In addition, there are situations in which making a formal demand can have specific legal consequences. Depending on the nature of the obligation and the terms agreed upon in the contract, it may be necessary to formally demand performance before pursuing certain remedies or seeking particular consequences arising from the breach. For this reason, before sending a communication of this nature, it is advisable to carefully review both the contract and the applicable law.

However, sending a demand letter is not always the best strategy.

In some cases, giving the counterparty advance notice of potential litigation may give it time to take steps that could make a future claim more difficult to pursue.

There may also be circumstances that justify immediately seeking interim measures or commencing proceedings without prior notice. In other cases, the contract may establish a specific procedure that must be followed before filing a lawsuit, such as sending notice to a designated person or address, or following a negotiation or mediation process.

It is also important to carefully consider the content of the communication. An overly aggressive letter may unnecessarily close the door to a potential settlement, while imprecise communication may create ambiguity as to what is actually being requested. Likewise, making unnecessary statements or acknowledging certain facts without first considering their implications, may affect the position of a party that later needs to pursue litigation.

For these reasons, a demand letter should not be viewed simply as a threat to sue. When used effectively, it can serve several purposes at once: clearly communicate a position, create an opportunity for negotiation, obtain information regarding the counterparty's position, and strengthen the documentary record in case formal proceedings later become necessary.

When faced with a breach, the decision to file a lawsuit should rarely be automatic. In many cases, a timely and carefully structured communication can resolve the problem before it escalates. And when that is not possible, a properly prepared demand letter can help the affected party enter litigation with a better-documented position and a clearer strategy.