

***DEAR READERS: Do you have a legal question that has been burning on your mind (but are afraid to ask an attorney...ching...ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.***

**Q: Last year I lent my nephew \$10,000 so he could start his own landscaping business. He has a few new customers, but instead of paying me, it seems like he spends his money on other things. When I ask him about the loan, he says he'll pay it back soon, especially when business picks up in the summer. I really don't want to sue him, but I don't want to be taken as a stooge, either. What can I do? D.S.**

Dear D.S.: Well, we can't put him in jail...debtor's prison was outlawed over a century ago. Although, technically, some debts may land you in jail, such as failure to pay child support.

Don't feel bad, though...your question is probably on the minds of 60% of our readers, as I suspect at least half of us are owed money by someone or some past adventure...a relative, a business association gone sour, or that smooth-talkin' boyfriend that was on the verge of securing the patent for that "million dollar invention".

Did you and your nephew have a verbal or written agreement regarding the loan? Hopefully, you have a "written instrument", like a promissory note, that addresses the terms of the loan and conditions for repayment. A promissory note can be "secured", meaning that if the borrower defaults, then the lender can attach or go after "secure" assets which are tied to the note, such as real property (a home/land), personal property (a car, boat, motorcycle, etc) or liquid assets (stocks, bonds, etc.). Collection on a note, though, has it's own twists and turns and is governed by a complex state law called the "Enforcement of Judgment Law".

Unfortunately, most promissory notes are not secured (nor do they give a personal "guarantee" that will bind both the individual and/or the entity (corporation, LLC). If you do have a written note, you generally have four years from the date of the first installment to file a civil action (breach of contract) against your nephew. Some notes will have language that extends the time to sue if the parties so agree.

If you have a mere verbal agreement, live and learn. Although verbal agreements are enforceable, they are typically worth the paper they are written on. Plus, generally speaking, the time to sue is shorter—two years from the date the first installment was due.

One option to collect on the debt is small claims court. You will take a bit of a "hit", as you say he owes you \$10,000 and the small claims limit in California is now at **\$7500**. The beauty of a small claim action is that it is fairly quick and inexpensive (filing fees

range from \$30-\$75). Free and local help is also available. Check out the Small Claims Advisory Clinic at 565-6457. The Clinic offers phone hours and walk-in hours. It is staffed by law students at Empire College School of Law and supervised by a local attorney. Be patient. The Clinic is leanly staffed and underpaid, but offers a forum for energetic and dedicated law students.

Another option is to turn the debt over to a collection agency, but their typical percentage is 25-40% of the monies that are collected, if any. Not a logical or realistic path to follow in this instance.

Back to your nephew. The least expensive (and most effective) way is to try to either encourage him to recall the same values that you and your siblings were raised with OR shame him into paying you a certain amount each month. True story—my brother in Florida had a landscaping/yard maintenance business and one of his clients, a pastor of a church, did not want to pay him for work done. My mother solved the problem overnight. She called the preacher and commented that if he did not pay in three days, she was going to appear at his Sunday service and loudly sing between the halleluiahs that “Brother John is a deadbeat and he owes my son \$150.00!!” He paid. Mother did not need to sing ---Silence was golden!

***Debra A. Newby is a resident of Monte Rio and has practiced law for 23 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in historic Railroad Square in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email ([debra@newbylawoffice.com](mailto:debra@newbylawoffice.com)), phone (707-526-7200), fax (526-7202) or pony express ( 10 Fourth Street, Ste 212, Santa Rosa, 95401).***