

## Writing Demand Letters

Demand letters are sent to people who are making clients unhappy (or to their lawyers). Typically, a demand letter recites what the other person has been doing to bother your client, explains how this violates the other person's obligations or your client's rights, and states what action the client will take if the other person does not stop.

### Why and How Lawyers Write Demand Letters

Lawyers write demand letters to persuade somebody else to do something ("resume shipping my client's most recent album under the contract") or to stop doing something ("cease using the hip-hop group name that infringes on my client's trademark"). To persuade, do three things in the letter: (1) state your client's position on the facts and the law, (2) tell the other side what you expect them to do, and (3) give them incentives to comply with your demand.

You have three or four audiences.

The first is the person to whom the letter is addressed. The recipient might be a lay person. Or, if you know the other side has a lawyer, you'll write to the lawyer directly.

Second, even if you write to a lay person, assume that that person will show the letter to a lawyer who will advise the recipient on whether to comply with your demands. That means you must persuade two people: the lay person to whom you write the letter and the lawyer who will advise that person. You'll say some things to persuade the lay person and other things to persuade the lawyer. This will be a challenge because if you write entirely lawyer-to-lawyer, you'll confuse the lay person, and if you write entirely for a lay audience, you'll omit things needed to persuade the lawyer.

The third audience is anybody else to whom the recipient might show your letter. That could include other people who will think badly of your client if you write an abusive letter. It could include the media if the matter is newsworthy. And it could include a judge or jury if a

lawsuit is later filed. If you say anything unwise in the letter, the recipient will use it against your client. To avoid that, assume that the recipient will show the letter to the entire world.

The fourth audience is your client. Good lawyerly practice is to send to your client a copy of most documents you generate on the client's behalf. A client hires a lawyer to speak in ways the client cannot, and a demand letter might be the first time you give voice to the client's grievance. This can be satisfying for you and the client. But it also creates two risks. First, don't raise the client's hopes that the letter will solve the problem. Sometimes it will, and sometimes it won't. Second, in the letter, don't posture just to look good to your client. Stay focused on the goal of persuading the other side.

## **How to Persuade through a Letter**

Develop the most convincing arguments. You want the reader to believe that in court you would win. If the other side won't believe that, you have very little leverage.

Explain carefully why the law favors your client. Long letters might be scanned rather than read. Explain your position very concisely while stressing the most important and persuasive parts. Look at things through the reader's eyes. What will most likely persuade this particular reader to do what you want?

Anticipate the arguments the opposing side can make. Demonstrate in the letter why those arguments will fail. If you don't do this, the other side will simply retort that their arguments are better than your arguments. The only way you can persuade is to undermine their confidence in their own justifications.

Be firm but reasonable. You must be firm to cause the other side to worry. But be reasonable to enhance your credibility with all of your audiences. The other side knows that letter-writers who make extreme and unrealistic statements are often unpersuasive in court. A demand letter with a bullying tone can fail to persuade for that reason alone. Assertiveness has a chance of working. Bullying does not.

Write in a professional tone. Don't insult or demean the other side or imply anger or sarcasm. Give professional respect. If you imply that the recipients are bad people, they're much less likely to give you what you want. Simply express a professional view of how the law treats these facts. Words like "scandalous" and "outrageous" can cause the other side to laugh. But if the governing legal rule contains a term like bad faith or negligence, you must use that term and show how the facts satisfy it.

Much of what goes wrong in life is caused by honest mistakes. Assume that the other side made an honest mistake in your situation. Being generous in this way may provide the other side with a graceful way of backing down and doing what you want them to do.

Write in simple, clear, concise language. Professionalism persuades. Lawyer babble has little or no effect on the reader. (See the textbook, pages 217–18.) Write in straightforward words that are easily understood.

Appeal to the opposing party's self-interest. Try to think of realistic ways in which they actually might be better off if they do what you want — in addition to avoiding your consequences.

If the other side would be receptive to moral arguments, make them. But before you make moral arguments, ask yourself whether the other side has moral arguments of its own to counter yours. That shouldn't deter you from making your moral arguments. But be prepared for theirs.

If the client has a continuing relationship with the opposing party, consider the client's need to avoid damaging that relationship. What is the client's goal in the relationship and how might the letter advance and avoid undermining that goal? For this and other reasons, you might show the letter to the client before sending it.

## Legal Ethics and Demand Letters

The rules of professional ethics don't allow you to "make a false statement of material fact or law."<sup>1</sup> Many states forbid lawyers to threaten criminal prosecution in civil matters, although the ABA Model Rules of Professional Conduct no longer makes this prohibition.

If you're writing to lay people, you aren't allowed to imply that you're disinterested, and you aren't allowed to give legal advice, except to suggest that they consult lawyers of their own.<sup>2</sup> You may not communicate with a lay person at all if you know that person is represented by a lawyer.<sup>3</sup> But if you don't know who the lawyer is, you can write to the lay person and suggest showing the letter to the lawyer.

## Structure of a Demand Letter

**1. The beginning formalities:** These include the letterhead, which is already printed on your law office's stationery; the date; the recipient's name and address; and the salutation ("Dear Ms. Naguchi:" — always with a colon, never a comma). If the letter is addressed to a lawyer or

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1. Rule 4.1(a) of the ABA Model Rules of Professional Conduct.
  2. Rule 4.3 of the ABA Model Rules of Professional Conduct.
  3. Rule 4.2 of the ABA Model Rules of Professional Conduct.

an organization, a “Re:” reference might be helpful. Place it between the recipient’s address and the salutation. Include there any information that would help the recipient identify its own records on the matter. Here’s an example:

Monica Naguchi  
Standard Insurance Co.  
4 Cornell Street  
Claremont, CA 91711

Re: Cucamonga Forwarders, Inc.  
your file # 10-326

Dear Ms. Naguchi:

In the first paragraph, state whom you represent and give enough information about the dispute so the reader will know why you are writing.

**2. The facts.** Include all the facts that are germane — but only the ones that are *truly* germane. If you include every little fact, the other side won’t get the point. If you want the reader to pay attention to every word, use the minimum number of words necessary to get the point across.

Make sure that what you say is perfectly accurate. Don’t stretch the facts or ignore facts that favor the other side. Any inaccuracy will give the other side an opportunity to say that you don’t understand the situation because your facts are wrong or incomplete. If you anticipate that the other side will dispute one of your facts or assert some facts of their own, address that at some point in the letter, either here in the facts or later when you analyze the law. You might explain how, even if the fact that other side might assert is true, it makes no difference legally and does not change your analysis.

**3. The law.** Show how the law favors your client. Explain the key concepts, but add only the essential details. Again, if you want the reader to pay attention to every word, use the minimum number of words needed to get the point across. If you are writing to a lay person, explain the law in language the lay person will understand, without oversimplifying.

Should you refer to specific statutes and cases? A lawyer usually will not be persuaded without them. The same will be true for a lay person who regularly deals with legal issues (such as an insurance company adjuster). But other lay people might not understand what you are talking about if your letter is filled with citations they cannot understand. If you want to cite to authority, consider citing in footnotes, where they’ll be seen by a lawyer but won’t distract a lay person.

**4. The demand and the consequences of failing to comply.** A very thin line separates threats from stating what will happen if the other side doesn’t satisfy your demand.

**threat —** If you do not resume deliveries by the close of business on May 15, we will sue for damages and ruin your business.

**stating consequences —** If you do not resume deliveries by the close of business on May 15, the only way my client will be able to protect itself will be to sue

for damages equal to its business losses. Those losses have been small through today's date, but they will become huge beginning on May 15.

Threats anger readers and make them want to fight back. Threats can also offend third parties like judges and juries, to whom the recipient might later show your letter. But you're writing to make the other side afraid of something, and they won't experience that fear unless you specify the consequences of not complying with your demand.

The best strategy is to depersonalize the consequences by de-emphasizing your role in them. Don't say "we will sue for damages and ruin your business." The other side wouldn't be able to comply without humiliating themselves. For that reason alone, they would refuse to do anything you want. *Try to find a way for them to concede with dignity.*

Characterize the consequence as something you'll be forced to do ("the only way my client will be able to protect itself will be to sue for damages equal to its business losses"). And attribute the severity of the consequence to something out of your control ("Those losses have been small through today's date, but they will become huge beginning on May 15").

Or you could describe what the law will do and mention what you'll do only in that context. Suppose you represent Ms. Metzger, who tells you that the fumes from a restaurant under her apartment are nauseating. You might end a letter to the restaurant owner by saying this:

Thus, courts generally decide in favor of neighbors like Ms. Metzger. Sometimes courts have even forced restaurants to move or close. We will have no choice but to sue unless by July 31 you have installed the filtration equipment required by city ordinance 63-179.

As in this example, the demand should be precise. Say *exactly* what the consequences will be.

The consequences are meaningless unless you set a clear deadline. If you set no deadline or a vague one ("immediately"), the other side will probably do little or nothing. The same thing will happen if your deadline is unreasonable. If the letter quoted above is received a few days before July 31, the restaurant owner will ignore it for two reasons. First, compliance would be extremely difficult or impossible within a few days. And second, an unreasonable deadline would make you look unrealistic. If you look unrealistic, you lose credibility.

**5. The ending formalities:** Add your signature over your typed name and under a parting comment like "Sincerely Yours" or whatever words are customary in your office. (Most readers never notice the parting comment or care, unless you say something completely inappropriate.)

## A Sample Demand Letter

Beginning on the next page is a sample demand letter. The lawyer who wrote it represents a tenant whose landlord is refusing to renew the lease. The apartment is covered by a statute that regulates tenancies because of a housing shortage. The lawyer's goal was to get a written lease so the tenant can prove to third parties where he lives.

The tenant's lawyer wrote the letter for two audiences: the landlord plus any lawyer the landlord might consult. The letter is written in straightforward language that a typical landlord could easily understand. But it's also written in precise language that would be meaningful to any lawyer the landlord might consult.

The tenant's lawyer makes assertions about the law that the landlord's lawyer would not accept unless they were supported by legal authority. Putting citations into the text of the letter would make it harder for the landlord to read. The solution was to put the citations in footnotes, where they are obvious to a lawyer but do not interfere with the letter's readability. That might or might not work in other demand letters, but it is appropriate here.

If this letter had been written directly to another lawyer — in other words, if it were not addressed to a layperson like the landlord — the letter would need to explain *how* the cases cited in the footnotes support the assertions in the text of the letter. A demand letter addressed to another lawyer sometimes reads like a mini-memorandum. But here the primary audience is the landlord. That kind of reader is more often persuaded by fact analogies than by nuanced interpretation of precedent.

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32 Fontanka Street  
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June 28, 2017

Frank Alston  
Alston Properties  
396 Gilliam Way  
Bedford Falls NY 14218

RE: Mateo Flores,  
Apt. 4-B, 440 Gilliam Way

Dear Mr. Alston:

I represent Mr. Flores. I'm writing to explain why the law gives him the right to live in Apartment 4-B for at least the next three years and why that should be formalized in a written lease.

As you know, the apartment is covered by statutes regulating rent and guaranteeing lease renewals if tenants want them. State law requires you to send Mr. Flores a notice offering him a renewal of his lease, and if he signs the form and returns it to you, his lease must be renewed.

For two reasons, the law considers Mr. Flores's lease to have been renewed automatically for three years, even though you haven't signed a written lease documenting that. He does not need both reasons. Either reason alone entitles him to a renewal lease.

The first reason is that your renewal notice is dated April 12. If you have a post office receipt proving that you mailed it the same day, sixty days later would be June 11. Because June 11 was a Sunday, the deadline would be the next business day, June 12. Mr. Flores has a postal receipt proving that he mailed his tenant's response to you on June 12. (If your postal receipt shows that you mailed the renewal notice *after* April 12, the deadline would be even later than June 12.)

The law considers the date on which a tenant mails his response to be the date on which it is returned. It is not necessary for you to receive it by the deadline. Mr. Flores is required only to mail it by then — which he did.

The second reason is that the courts have decided that a tenant is entitled to a renewal lease even after the tenant returns the form late. That has happened where the tenant mailed

the response *twelve* days late.<sup>1</sup> And five days late.<sup>2</sup> And two days late.<sup>3</sup> The courts have held that the only way you can overcome this is to prove that you signed a lease for the apartment with someone else or in some other way prejudiced yourself *before* you received Mr. Flores's response.<sup>4</sup> And the courts will not even let you do that because Mr. Flores informed your secretary on June 12 that he was renewing his lease and mailing his tenant's response to you on that day.

Thus, Mr. Flores has a right to remain in the apartment at least until June 11, 2020, which is three years from the date his current lease expires. Even if you don't sign a new lease for that period, the terms of his current lease remain in effect until July 11, 2020. But I ask that you sign a new lease to document Mr. Flores's continued residence in the apartment. He needs it to get insurance for his personal property there.

Mr. Flores has always paid his rent on time and has been a careful and responsible tenant. For example, he's a licensed electrician, and when the apartment complex suffered an electrical outage two months ago, he spent an entire weekend helping your employees diagnose and resolve the problem. This saved you the cost of hiring other electricians to do the work. Giving him the courtesy of a signed lease would certainly be a small favor in return, especially where the law treats the lease as renewed anyway.

Sincerely yours,

Clyde Farnsworth

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1. *Glen Arms Group v. Diaz*, 2001 N.Y. Misc LEXIS 662 (Dist. Ct, Nassau County 2001).

2. *Gordon v. Barash*, 325 N.Y.S.2d 213 (Civ. Ct., N.Y. County 1971).

3. *Baja Realty v. Karoussos*, 467 N.Y.S.2d 505 (App. T., 1st Dept. 1983).

4. *J.N.A. Realty Co. Cross Bay Chelsea*, 366 N.E.2d 1313 (N.Y. 1977); *Sy Jack Realty Co. v. Pegament Syosset Corp.*, 267 N.E.2d 462 (N.Y. 1971); *67 8th Ave. Assocs. v. Hochstadt*, 451 N.Y.S.2d 408 (1st Dep't 1982).