Blowing the Whistle on Credit Card Debt

By: John Gliha

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Introducing John Gliha, Author of

Blowing the Whistle on Credit Card Debt

No newcomer to the debt elimination/debt resolution industry, John Gliha was actually the founder of it back in 1993. Just like the many of you who have taken the time to search out his work, John found himself in a significant amount of credit card debt. And, like you, he had neither the burning desire nor the money to pay his way out of it.

After talking with a series of attorneys to whom he had gone for help, he realized that they all sang the same tunes: negotiate a settlement or file bankruptcy. He didn't want to do either. They simply weren't actually working to defend their clients, just going through the mindless motions they had been taught in law school. He knew the tax ramifications that come with settlement; he knew the problems associated with bankruptcy. He knew that people were being advised to pay huge amounts of their savings and having on-going tax liabilities because of it. There had to be a better way.

John began a program of research and letter writing. His research taught him a lot about the banking industry, practices, and revealed some of their secrets. His letter writing resulted in surprising successes – some of his creditors simply stopped trying to collect money from him. As a result, he began publishing these first responses to creditor collection attempts. In fact, even though they stopped working to any degree at all, you can still find them for sale on plagiarizers' websites today as if they were leading edge material.

Over the following 8 – 10 years, thanks to John's on-going research, he further advanced strategies to assist attorneys with what to do in court. During this time, John also realized that the "binding arbitration" that banks began forcing on their clients was totally one sided. In response, he helped found nine independent consumer arbitration firms which resulted in millions of dollars in court costs to banks – and exposed the anti-trust violations which have lead to a multi-BILLION dollar lawsuit which is now pending in New York against seven of the major creditors. You may have one or more of their cards in your pocket or purse right now.

In 2004, John co-founded the first nationwide attorney network of its kind to assist people in defending against collection attempts instead of settling. This growing network is now available in almost every state. There may be one of them in your county all ready.

In 2005, John introduced the concept of business process outsourcing to the member law firms which enables them to significantly reduce the numbers of billable hours they charge to successfully defend against collections. While outsourcing has become the norm for many companies, it was a new concept for attorneys. Never before had they had the opportunity of having a professional firm do their back office case preparation work for them. To John, it was a natural. His company, Due Process, LTD, had been doing this work for years. He had a nice, round, perfectly functional wheel. There was no need for attorneys to continually re-invent it. This actually saves our customers 60% - 80% of the attorney's billable hours should attorney services be needed.

In November, 2005, John announced the premier program in the debt resolution industry. Called "Nominee Exchange©", it is a patent pending method of providing consumers with a superior legal lien which they can use for life to prevent wage garnishments and bank levies. This process is similar to the standard legal process that big businesses use in bankruptcy under Chapter 11, Section 364(d) to protect themselves against creditors.

What this means to you is that Nominee Exchange© gives you total protection against all of your unsecured creditors. There is no need for an attorney, there is no chance of losing a case in court because the judge's brother is a banker, it is an assured program. The catch is that you have to qualify for it – and not everyone can. It is a superior program than the one described in this book but to qualify for it you must meet the following:

(1) You cannot have received a summons to appear in court to defend against a creditor, and/or

(2) You must not have a ***local*** attorney threatening suit.

Generally, those who are no more than three months behind in payments would qualify. It is our sincere hope to be able to extend the superior benefits of the Nominee Exchange® to everyone; however, some will be in a situation to better utilize the research and advanced defense strategies published in Winning the Collection Game®.

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WHAT COULD YOU DO WITH YOUR NEXT 18 CREDIT CARD PAYMENTS?

Imagine what is must have been like when someone first proposed that cutting your skin to allow blood to drain was a cure to sickness. This was known as bloodletting and was practiced as late as the eighteenth century. Imagine the reaction of people when a procedure known as surgery was first proposed. It must have been horrifying since at that time, most people did not even understand basic anatomy.

Now imagine the reaction of the first clients of attorneys offering asset protection when they were advised that in order to protect their home, business or other wealth; that they would need to transfer its ownership into a corporation or a trust. Of course this is now commonly understood by many people seeking to protect things they own and have worked hard to acquire. Did you know that virtually anything that can be sold or assigned can be protected by traditional, standard asset protection and estate planning strategies? The only exception to this has been employment income or income from self-employment sources, at least until the Nominee Exchange®.

What is the Time Value of Money?

The most important fact to remember about debt is that the longer the borrower has the use of the money borrowed, the more valuable it is to him and the less valuable it is to the lender. As I explained before, this is the primary reason why the news helps the banks blame the Comptroller regarding the drastic increase in monthly payments for consumer credit accounts. The increase helps the banks offset the lost value due to inflation, which by the way, they create.

Net Present Value of Money: Money Today is worth more than Money Tomorrow

If you are not mathematically inclined, just follow the key points of the following explanation. It demonstrates the time value of money in terms of interest which can be earned over time. Keep in mind that "interest" can originate from many sources such as a return on an investment you made or a stated interest rate from a loan you made or which a bank might pay you for using your money in a timed deposit.

The term "present value" means how much you have now, and the "future value" is how much what you have now grows to when compounded at a given rate. The following illustration is an example of a $100 that pays you 10% interest annually for two years.

The Present Value = $100

Future Value = $121

FV= PV (1 + i)^N

121 = 10(1 + .10) ^2

FV = $121 PV = $10

i = 10% N= 2

These are the definitions of each variable.

FV= PV (1 + i)^N (^ exponent, to the N^th^ power)

FV = Future Value

PV = Present Value

i = the interest rate per period

N= the number of compounding periods

Here is another example. What is the future value of $34 in 5 years if the interest rate is 5%?

FV= PV (1 + i)^N

FV= $ 34 (1+ .05) 5

FV= $ 34 (1.2762815)

FV= $43.39

You can go backwards too. I will give you $1000 in 5 years. How much money should you give me now to make it fair to me? You think a good interest rate would be 6% (You just made that number up).

FV= PV (1 + i)^N

$1000 = PV (1 + .06) 5

$1000 = PV (1.338)

$1000 / 1.338 = PV

$ 747.38 = PV

You give me $747.38 today and in five years I'll give you $1000. Is this a good deal? You will get 6% interest on your money. It’s a good deal unless you can deposit that same amount in another deal and earn more interest.

Reference

McCracken, M. E. (2005). The time value of money. Retrieved February 1st 2006 from http://teachmefinance.com/timevalueofmoney.html

Suppose your brother or sister owed you $500. Would you rather have this money repaid to you right away, in one payment, or spread out over a year in four installment payments? Would it make a difference either way?

According to a concept that economists call the time value of money, you would probably be better off getting your money right away, in one payment. You could invest this money and earn interest on it or you could use this money to pay off all or part of a loan. There are a million things you could do with this money. The time value of money refers to the fact that a dollar in hand today is worth more than a dollar promised at some future time.

But how can that be? A dollar is a dollar, isn't it? Yes, but a dollar in hand today can be invested in an interest-bearing account that would grow in value over time. It could also be invested as a down payment on an asset which can pay you every month. This explains in part why the value of money is related to time.

Opportunity Cost

The time value of money is related to another concept called opportunity cost. The cost of any decision includes the cost of the best forgone opportunity. If you pay $10.00 for a movie ticket, your cost of attending the movie is not just the ticket price, but also the time and cost of what else you might have enjoyed doing instead of the movie. Applying this concept to the $500 owed to you, you see that getting the money in installments will saddle you with opportunity cost. By taking the money over time, you lose the interest on your investment or any other use for the initial $500, such as spending it on something you would have enjoyed more.

The trade-off between money now and money later depends on, among other things, the rate of interest you can earn by investing.

Process:

First, consider future value. Future value (FV) refers to the amount of money to which an investment will grow over a finite period of time at a given interest rate. Put another way, future value is the cash value of an investment at a particular time in the future. Start by considering the simplest case, a single-period investment.

Investing For a Single Period:

Suppose you invest $100 in a savings account that pays 10 percent interest per year. How much will you have in one year? You will have $110. This $110 is equal to your original principal of $100 plus $10 in interest. We say that $110 is the future value of $100 invested for one year at 10 percent, meaning that $100 today is worth $110 in one year, given that the interest rate is 10 percent.

In general, if you invest for one period at an interest rate r, your investment will grow to (1 + r) per dollar invested. In our example, r is 10 percent, so your investment grows to 1 + .10 = 1.10 dollars per dollar invested. You invested $100 in this case, so you ended up with $100 x 1.10 = $110.

Investing For More Than One Period:

Consider your $100 investment that has now grown to $110. If you keep that money in the bank, what will you have after two years, assuming the interest rate remains the same? You will earn $110 x .10 = $11 in interest after the second year, making a total of $100 + $11 = $121. This $121 is the future value of $100 in two years at 10 percent. Another way of looking at it is that one year from now; you are effectively investing $110 at 10 percent for a year. This is a single-period problem, so you will end up with $1.10 for every dollar invested, or $110 x 1.1 = $121 total.

This $121 has four parts.

The first part is the first $100 original principal.

The second part is the $10 in interest you earned in the first year.

The third part, is the other $10 you earn in the second year, for a total of $120.

The fourth part is $1 which is interest you earned in the second year on the interest paid in the first year: ($10 x .10 = $1).

The process of leaving the initial investment plus any accumulated interest in a bank for more than one period is reinvesting the interest. This process is called compounding. Compounding the interest means earning interest on interest so we call the result compound interest. With simple interest, the interest is not reinvested, so interest is earned each period is on the original principal only.

You are losing the time value of money

How do you benefit if your total monthly payment on all of your credit cards is $600 on a collective balance of $55,000? You are spending the $600 now, losing the time value of that money, and conveying that benefit to the creditor. What could you do with that $600 and what could you do with twelve of those payments ($7,200) in one year? What could you do with the next 18 months of those payments? What if you had $25,000 in cash to use in a settlement on the entire balance? What could you do what that money if instead of paying creditors, you invested it and used the return for something that would improve your financial position?

This Is prudent business practice!!!

This is not to advocate something which would be considered illegal by any measurement. In fact, this is a standard practice in business today. If it was your original intent to pay what your creditors wanted, wouldn't you be better able to do this if you were first in a better financial position? Of course! Why would anyone want to try and pay creditors from a position that depletes their savings, compels borrowing from family and friends or places them further into debt, especially against their home? It makes no sense. Creditors will never tell you this, but if you have the ability to place yourself into a better financial position and then make payment arrangements with creditors, you will not only serve yourself and your family first, you will be better able to return the money you borrowed and do it in a way that is mutually beneficial to the both of you. After gaining an understanding of the strategy of Nominee Exchange®, some of you will do this and many of you will realize that you have the final say about whether or not you will pay anything. This is a very powerful tool and once you have it in place, you will be free to make this decision for yourself.

Second mortgages can cost you your home – it makes no sense to place more debt on a secured asset to pay off an unsecured one.

Nominee Exchange® can put you in a Power Position

Why is this process able to stop future wage garnishments?

A wage garnishment is an order from a court requiring an employer to pay a certain percentage of an employee's (judgment debtor) income to the judgment creditor. The Consumer Credit Protection Act substantially limits the amount that can be garnished based on the employee's ability to pay, or income level. The less you make, the less they can take.

Using non-payment strategies of Winning the Collection Game®, the employee can drastically reduce his total debt while taking advantage of the collection limitations imposed by the Consumer Credit Protection Act if he is subjected to a judgment lien.

Using the pro-active planning or financing strategies of the Nominee Exchange®, the employee can remove any creditor's ability to garnish his paycheck by occupying that first judgment lien position; yet utilizing a process that allows him to obtain financing. In other words, ***the objective is to obtain financing in a way which improves your financial situation***, yet a consequence (not the primary objective) is that the next creditor will not be able to obtain a wage garnishment, even though he might be able to obtain a judgment lien.

A wage garnishment is any legal or equitable procedure through which some portion of a person's earnings is required to be withheld by an employer for the payment of a debt. Most garnishments are made by court order. Other types of legal or equitable procedures include IRS or state tax collection agency levies for unpaid taxes and federal agency administrative garnishments for non-tax debts owed the federal government. Wage garnishments do not include voluntary wage assignments - that is, situations in which employees voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors.

Which Federal law regulates wage garnishment?

Title III of the Consumer Credit Protection Act limits the amount of an employee's earnings that may be garnished and protects an employee from being fired if pay is garnished for only one debt. Title III is administered by the Wage and Hour Division of the Department of Labor's Employment Standards Administration. The Wage and Hour Division has no other authority with regard to garnishments. Questions over issues other than the amount being garnished or termination should be referred to the court or agency initiating the withholding action. For example, questions regarding the priority given to certain garnishments over others are not matters covered by Title III and may be referred to the court or agency initiating the garnishment action.

To whom does the law apply?

The law protects everyone receiving personal earnings, i.e., wages, salaries, commissions, bonuses, or other income - including earnings from a pension or retirement program. Tips are generally not considered earnings for the purposes of the wage garnishment law. The law applies in all 50 states, the District of Columbia, and all U.S. territories and possessions.

The Consumer Credit Protection Act law protects everyone receiving pay.

What is the protection against discharge when wages are garnished?

The CCPA prohibits an employer from firing an employee whose earnings are subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect that debt, because of the single garnishment. The Act does not prohibit discharge because an employee's earnings are separately garnished for two or more debts.

What are the restrictions on wage garnishment?

The amount of pay subject to garnishment is based on an employee's "disposable earnings," which is the amount left after legally required deductions are made. Examples of such deductions include federal, state, and local taxes, the employee's share of State Unemployment Insurance and Social Security. It also includes withholdings for employee retirement systems required by law. Deductions not required by law - such as those for voluntary wage assignments, union dues, health and life insurance, contributions to charitable causes, purchases of savings bonds, retirement plan contributions (except those required by law) and payments to employers for payroll advances or purchases of merchandise - usually may not be subtracted from gross earnings when calculating disposable earnings under the CCPA.

The law sets the maximum amount that may be garnished in any workweek or pay period, regardless of the number of garnishment orders received by the employer. For ordinary garnishments (i.e., those not for support, bankruptcy, or any state or federal tax), the weekly amount may not exceed the lesser of two figures: 25 percent of the employee's disposable earnings, or the amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage (currently $5.15 an hour). For illustration, if the pay period is weekly and disposable earnings are $154.50 ($5.15 X 30) or less, there can be no garnishment. If disposable earnings are more than $154.50 but less than $206.00 ($5.15 X 40), the amount above $154.50 can be garnished. A maximum of 25 percent can be garnished, if disposable income earnings are $206.00 or more. When pay periods cover more than one week, multiples of the weekly restrictions must be used to calculate the maximum amounts that may be garnished. The table and examples at the end of this fact sheet illustrate these amounts.

If your earnings are $500 a week, they can take $86.

What about child support and alimony?

Specific restrictions apply to court orders for child support or alimony. The garnishment law allows up to 50 percent of a worker's disposable earnings to be garnished for these purposes if the worker is supporting another spouse or child, or up to 60 percent if the worker is not. An additional 5 percent may be garnished for support payments more than l2 weeks in arrears.

Are there any exceptions to the law?

The wage garnishment law specifies that the garnishment restrictions do not apply to certain bankruptcy court orders, or to debts due for federal or state taxes. If a state wage garnishment law differs from the CCPA, the law resulting in the smaller garnishment must be observed. You may be able to claim one or more exemptions and avoid paying the judgment or at least a portion of it.

Bank Account funds that are from:

Veterans Benefits

Child Support Payments

U.S. Government Pension

Unemployment Compensation

Supplemental Security Income (SSI)

Temporary Assistance for Needy Families

Certain funds in a joint or community account

Other public Assistance or Income allowed by State Law

It is financially beneficial to allow the maximum exemption permitted (25% after withholdings and default statutory exemptions) and preclude all but the first creditor from taking any money from your income.

In order to protect your right to claim these exemptions you must, within 28 days from the date on the Writ of Garnishment, deliver to the court clerk and mail a copy to the plaintiff, the completed Exemption Claim Form. The problem with claiming an exemption is that you allow second and third judgment creditors to hold a garnishment position in addition to the first creditor.

What about non-tax debts owed Federal Agencies?

The Debt Collection Improvement Act authorizes federal agencies or collection agencies under contract with them to garnish up to 15% of disposable earnings to repay defaulted debts owed the U.S. Government. The Higher Education Act authorizes the Department of Education's guaranty agencies to garnish up to 10% of disposable earnings to repay defaulted federal student loans. Such withholding is also subject to the provisions of the federal wage garnishment law, but not state garnishment laws. Unless the total of all garnishments exceeds 25% of disposable earnings, questions regarding such garnishments should be referred to the agency initiating the withholding action.

What is the Consumer Credit Protection Act?

And why won't attorneys tell you about it?

A writ of garnishment is one method a creditor might use to recover unpaid debt.

Federal law exempts from garnishment 75% of disposable earnings per week, or an amount up to thirty times the federal minimum hourly wage (currently $5.15), whichever is greater. Some states still have wage garnishment laws in place; however, when the federal law provides a larger exemption than the state law, the federal law supersedes the state law.

The following is a description of the limits imposed against the process of wage garnishments from judgment creditors such as banks, debt collectors and private parties. ***The summary of it is that a person will pay far less money if he never offers a settlement, joins a consolidation program or files bankruptcy*** (if it's available at all); but instead, simply defends against the collection process using Winning The Collection Game® strategies. The same is true for the Nominee Exchange® for people who are current or have no collection problems at the time they begin the program.

Pay less than you would if you settled, consolidated, or filed bankruptcy.

Attorneys have certain obligations to their clients, the ethical and legal obligation to explain the facts in this memorandum. ***Recommending to a client that filing bankruptcy will best serve his interests is irresponsible and possibly negligent***. The numbers speak for themselves. The same is true for recommending a settlement, when a client is certain to pay far less money simply by defending the collection, forcing the plaintiff to meet the burden of proof and subjecting himself to the possibility of a wage garnishment.

You should work with attorneys who understand these facts as they relate to the CCPA. If any attorneys in our database regularly refer our subscribers to consolidation, settlement or bankruptcy, we will discontinue doing business with them. We will also provide this article for their review and the review of their clients (our subscribers).

These garnishment restrictions are imposed under the Consumer Credit Protection Act.

The law sets the maximum amount that may be garnished in any workweek or pay period, regardless of the number of garnishment orders received by the employer.

MAXIMUM GARNISHMENT OF DISPOSABLE (after tax withholding) EARNINGS UNDER NORMAL CIRCUMSTANCES FOR THE $5.15 MINIMUM WAGE			
Weekly	**Biweekly**	**Semimonthly**	**Monthly**
$154.50 or less: NONE	$309.00 or less: NONE	$334.75 or less: NONE	$669.50 or less: NONE
More than $154.50 but less than $206.00: Amount ABOVE $154.50	More than $309.00 but less than $412.00: Amount ABOVE $309.00	More than $334.75 but less than $446.33: Amount ABOVE $334.75	More than $669.50 but less than $892.67: Amount ABOVE $669.50
$206.00 or more: MAXIMUM 25%	$412.00 or more: MAXIMUM 25%	$446.33 or more: MAXIMUM 25%	$892.67 or more: MAXIMUM 25%

These restrictions do not apply to garnishments for child and/or spousal support, bankruptcy, or actions to recover state or federal taxes. This information was obtained from the United States Department of Labor.

Every single method of resolving collection problems, including bankruptcy, settlement, and consolidation relies on avoiding lawsuits and avoiding debating the merits of the disputed credit account. Likewise, each of these methods are subject to being severely disadvantaged when there is no incentive for creditors to negotiate or when the debtor has property that can be liquidated and taken under court order or when laws change to bring about these situations.

Winning The Collection Game® relies exclusively on the anticipation of a lawsuit as the most effective and positive

means of reducing your debt problems nearly to none at all and permanently.

It does not rely on the whims of a trustee in bankruptcy, unfair legislation written by the banking industry or the negotiating abilities of a settlement agent or the incompetence of a consolidation service. This program relies on the unchanging and unalterable process of debating each collection case on its merits, testing the evidence and forcing the creditor and collector to meet the burden of proof.

Each citizen has the right to use the court system to his advantage but it was not until this program was created that anyone really had equal access to the courts as the creditors and debt collectors. Before Winning the Collection Game, the costs for access to the courts were prohibitive, costing more than the debts themselves. This program creates a new market for attorneys who want to defend consumers against credit collections while also providing their clients with very affordable and competent representation in the course of leveraging the strategies of Winning the Collection Game® to the client's best interests.

Imagine a person with $40,000 (5 credit accounts) in credit card or unsecured debt. His payments might have doubled in recent months and his interest rate is much higher, maybe 20% - 30%.

There is no law imposing any penalty for nonpayment.

No matter what his payments are, or that is, what the creditor wants every month, there is no law imposing any penalty on him if he simply stops making those payments.

If he does nothing, and the worst of the worst case scenarios happens, all five creditors sue him and get a judgment within 18 months of the first nonpayment. This time period is normal, but the chance that they all would sue him at once is highly unlikely, either way...

The state statutes impose a legal interest rate attached to judgments of this sort (usually where the contracted interest rate exceeds the state's legal rate) and that rate is not subject to the "unlimited" rate allowed in the credit agreements these days.

I can give you a table, but it typically ranges from 5% to 12% depending on the state of residence.

THIS IS IMPORTANT. READ THIS CAREFULLY.

If the person did nothing, and these judgments were obtained and the first judgment creditor obtained a writ of garnishment, and he did not object to the amount, so they get the maximum of 25% after the CCPA exempt amount (Table of Limits) and after tax withholdings, this would preclude all four other creditors from taking any part of his paycheck.

So the monthly payments he was making 18 months ago, about $600 to $800, at an interest rate of about 25%, could now be $200 through the wage garnishment, at a rate of 12% or under. That's the refinance, and now he is paying only one creditor at vastly lower rates and lower monthly amounts. He is paying based on his ability to pay, and not based on how much the world says he owes, thanks to the CCPA.

We should understand that to have the use of another's money for a longer period of time at a lower rate is worth much more to the borrower, in this case our customer, than the creditor.

What does he do with that money he didn't pay for 18 months? What does he do with the difference after the wage garnishment begins?

Winning The Collection Game® drastically increases the chance that the creditor will not reach the judgment stage and insures that the creditor pay huge amounts of money in the process. This severely hurts the creditor and can and has strongly influenced the collection policies of many of them, which our current customers are now benefiting from.

With Nominee Exchange®, we take it to the next level and position our customer in that first lien position so nobody gets anything, EVER.

Restrictions on Wage Garnishments by State

The following section describes the restrictions imposed on each state by both the Consumer Credit Protection Act and state law. You may also contact your local clerk of court for the forms and instructions regarding wage garnishments to learn how the court processes them and applies these limitations.

Alabama Wage Garnishment

Prior to April 12, 1988

1. 20% of weekly disposable earnings; or

2. Amount by which the debtor's disposable earnings exceed fifty (50) t times the minimum wage.

After April 12, 1988:

1. 25% of weekly disposable earnings; or

2. Amount by which the debtor's disposable earnings exceeds thirty (30) times the minimum wage.

Alaska Wage Garnishment

Allowed by in an action upon an express or implied contract. (A.S. 09.40.010)

See A.S.09.38.010- 09.40.30 for list of exemptions. Here are just three exemption examples:

1. Homestead exemption allows debtor to retain up to $54,000 interest in primary residence. (A.S.09.38.0l0)

2. Most state and federal benefits (welfare, social security, etc.) are exempted from attachment. (A.S. 09.38.015)

3. The first $402.50 per week is exempt unless the debtor is the sole supporter of the household. In this case, the first $602.50 per week is exempt. (A.S. 09.38.030)

Arizona Wage Garnishment

Wages and earnings are garnishable: (A.R.S §12-1598 et seq.).

§12-1598 (4) defines "Earnings" broadly to include all forms of compensation.

25% of the statutory net disposable earnings of debtor. Court may reduce to as low as 15%.

Computing the amount is a function of a statutorily approved formula embodied in a form referred to as the Non Exempt Earnings Statement (NEES). This requires the employer/garnishee to publish the gross earnings and "disposable earnings" and perform specifically prescribed calculations. The first calculation is to enter 25% of the "disposable earnings". Next, the federal minimum wage is calculated for the subject payroll period (30 times the minimum wage for weekly payroll, 60 times for bi-weekly, and 65 times for semi -monthly payroll). That calculated minimum wage sum is subtracted from the disposable earnings. That calculated amount is compared to the 25% of net sum and the upper of the two sums is the sum to be used for the next calculation. At this point, any court ordered levies, support orders, or other wage assignments are subtracted. The remaining balance must be held and paid over pursuant to the continuing lien order.

Arkansas Wage Garnishment

Federal garnishment rules and exemptions are used.

California Wage Garnishment

Up to 25% of the debtor's net disposable earnings. Once the levy has been served on the employer by the sheriff or marshal, it remains in effect until the judgment has been paid in full. Because California is a community property state, the wages of a non-judgment debtor spouse are also subject to levy.

Colorado Wage Garnishment

Gross earnings for the First Pay Period less deductions required by Law

Amounts based on Federal minimum hourly wage $5.15.

Weekly: $154.50 or 75% of Disposable Earnings

Bi-weekly: $309.00; or 75% of Disposable Earnings

Semi-monthly $334.75 or 75% of Disposable Earnings

Monthly: $669.50 or 75% of Disposable earnings

Connecticut Wage Garnishment

Pursuant to CGS §52-361a, the maximum amount which can legally be withheld from a debtor's wages is the lesser of:

1. 25% of weekly disposable earnings; or
2. Amount by which the debtor's disposable earnings exceeds forty (40) times the higher of either
    - A. The current federal minimum hourly wage; or
    - B. The state's prevailing full minimum fair wage.

Delaware Wage Garnishment

15% of statutory net income. Garnishment remains in effect until the judgment is paid in full.

Bank accounts cannot be garnished!

District of Columbia Wage Garnishment

Garnishments are stacked and kept in place while the senior in time garnishment is paid off.

25% of disposable income can be attached by a wage garnishment.

Creditors must send the debtor, the garnishee and the Court a monthly statement of account showing the application of payments to interest, principal, attorney's fees, and costs. Garnishees remit directly to the creditor or creditor's attorney.

Bank Accounts: No exemptions other than social security and disability income Attaching creditor can withdraw 100% of joint account balance. (The co-owner of the account might prevail in exempting funds depending on the judge and the source of the funds)

Florida Wage Garnishment

Florida Statutes, chapter 77 outlines very strict procedures for garnishment. Florida Statutes §222.11 offers a significant exemption to wage garnishment known as the "head of family" exemption. Effective July 1, 2001, the judgment creditor is required to serve a notice of rights to the defendant upon receipt of the employees answer with a form for the defendant to fill out to claim exemptions.

Georgia Wage Garnishment

Pursuant to OCGA 18-4-20, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed the lesser of twenty-five percent (25%) of his disposable earnings for that week, or the amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage. For earnings for a period other than a week, a multiple of the federal minimum hourly wage equivalent in effect shall be used.

Hawaii Wage Garnishment

The portion of the defendant's after tax wages that must be withheld is 5% of the first $100 per month, 10% of the next $100.00 per month and 20% of all sums in excess of $200.00 per month, or an equivalent portion of these amounts per week. Wages and other compensation owed to the debtor for personal services rendered by the debtor during the 31 days prior to a proceeding are exempt.

Idaho Wage Garnishment

The maximum part of an individual's disposable earnings for the work week subject to garnishment may not exceed the lesser of:

1. 25% of the disposable earnings; or
2. The amount of the disposable earnings that exceed 30 times the federal minimum hourly wage.

When the garnishee is the defendant's employer, the continuing garnishment is in effect until the judgment is satisfied and if the maximum is being withheld, no additional garnishments can be served until that garnishment is satisfied.

Illinois Wage Garnishment

The maximum part of an individual's disposable earnings for the work week that can be garnished is the greater of:

1. 15% of the disposable earnings; or
2. The amount of the disposable earnings that exceed 45 times the federal minimum hourly wage.

Indiana Wage Garnishment

The maximum part of an individual's aggregate disposable earnings for the workweek that is subject to garnishment in Indiana is the lesser of:

1. 25% of the disposable earnings; or
2. The amount of the disposable earnings that exceed 30 times the federal minimum hourly wage.

Note: A wage garnishment can be obtained after interrogatories are served and completed and after a motion for proceeding supplemental is heard. Garnishments filed in Claims Court cases require a filing fee of approximately $15.00. Indiana now recognizes Voluntary Wage Assignments, which are to be signed by the debtor and the creditor, or the creditor's attorney, and submitted to the employer.

Iowa Wage Garnishment

Garnishments last for seventy days. The maximum part of an individual's aggregate disposable earnings for the workweek that is subject to garnishment in Indiana is the lesser of:

1. 25% of the disposable earnings; or

2. The amount of the disposable earnings that exceed 40 times the federal minimum hourly wage.

There is a sliding scale per creditor (not per judgment) ranging from $250 to 10% of annual wages, depending on annual wages.

Public employees can be garnisheed.

<u>Kansas Wage Garnishment</u>

The maximum part of an individual's aggregate disposable earnings for the workweek that is subject to garnishment in Indiana is the lesser of:

1. 25% of the disposable earnings; or

2. The amount of the disposable earnings that exceed 30 times the federal minimum hourly wage; or

3. The amount of plaintiff's claim stated in the order for garnishment.

Note: No creditor can issue more than one garnishment against the same debtor during any 30-day period.

<u>Kentucky Wage Garnishment</u>

Controlled by KRS 425.506. After a 10-day waiting period from date of judgment, a creditor may, using a pre-approved state form, file for wage garnishment to be issued by the clerk of the court, and an order of garnishment is then mailed to the garnishee employer. The employer has 20 days within which to respond. If the garnishee employer fails to answer, it may be held liable to the creditor for failing to honor the garnishment.

Wage garnishments create a continuous lien against a debtor's wages, until the debt is paid. KRS Chapter 427, which deals with exemptions, authorizes a debtor to challenge garnished funds as exempt, and provides for a subsistence allowance beyond which a plaintiff cannot garnish (generally 25% of the debtor's disposable earnings per week). Wage garnishments have priority according to the date of service upon the employer.

<u>Louisiana Wage Garnishment</u>

Louisiana uses the federal wage garnishment guidelines. Wage garnishments are effective immediately upon service of the garnishment on the employer. The amount withheld is 25% of disposable income. 401K or other retirement funds are not counted as disposable income. Deductions are to be withheld from every paycheck and are remitted by the employer at least monthly. The Garnishment stays in effect until the full balance due is paid, including all attorneys' fees, interest, court costs and so forth.

Maine Wage Garnishment

Garnishment is available:

1. After a judgment issues and a supplementary (Disclosure) hearing is held;

2. If the debtor fails to appear at the Disclosure hearing, a garnishment order may issue for 25% of the debtors disposable earnings on a weekly basis or the amount which the disposable weekly earnings exceed 40 times the federal minimum wage, whichever is less (14 M.R.S.A. 3127 et seq,). The exemption on wages is now $226.00 weekly;

3. If the judgment debtor fails to pay two installments after being ordered to do so.

Maryland Wage Garnishment

Disposable wages are defined as the amount of wages that remain after mandatory deductions required by law, plus medical insurance payments. The amount exempt is the greater of 75% of disposable wages, or $145 times the number of weeks in which the wages were earned (in Caroline, Kent, Queen Anne's and Worcester 30 times the federal minimum hourly wages due under the Fair labor Standards Act.) (Annotated Code of Maryland, Commercial Law Article Sec. 15-601.1)

A judgment creditors report must be sent each month to the debtor and employer.

Massachusetts Wage Garnishment

Wage attachments may be obtained by bringing an action under G.L. c. 246 for trustee process, based on a judgment only, usually after unsuccessful supplementary process proceedings.

After service of the trustee process complaint upon the debtor, the creditor must proceed by way of motion for permission to make the wage attachment. Writs are ordinarily returnable to Court within thirty (30) days and must be served on each payday by an officer.

The writ commands the employer to withhold the wages, pending further order of the court. The employer must file an Answer with the court under oath regarding each service of the writ of attachment, specifying what, if anything, the employer has withheld from the wages of the debtor.

After the creditor has attached all that he is able to, he must then return to the court, with notice to the debtor, with a motion to "charge the trustee." After a ten-day appeal period, the Clerk's Office will issue a trustee execution, which must be served on the employer-trustee by an officer. The execution directs the employer to hand the withheld funds over to the officer.

Michigan Wage Garnishment

Federal statute limits withholding up to 25% of disposable earnings per week, unless the debtor's earnings are at or near the minimum wage, 15 USC 1673, in which case no withholding is allowed.

Time Limit: Garnishment writ expires 91 days after issuance, MCR 3.101(B)(1)(a)(ii). A new writ must then be issued and served.

Stay of Wage Garnishment: Courts may grant the debtor an "installment payment order," MCL 600.6201, MCR 3. 104(A), which bars wage garnishment, provided that the debtor pays as required by the order. Such an order does not prevent garnishment of bank accounts or income tax refunds. MCL 600.6245, MCR 3.101(N). Some courts nevertheless do not allow any garnishment while an installment payment order is in effect.

Minnesota Wage Garnishment

Minnesota Statute 550.136 and 551.06 governs wage attachment. The maximum part of an individual's disposable earnings for a pay period that can be garnished may not exceed the lesser of:

1. 25% of the disposable earnings, or
2. The amount of the disposable earnings that exceed 40 times the federal minimum hourly wage.

The portion of the defendant's earnings which are not subject to a wage garnishment are also exempt from garnishment for 20 days after they have been deposited in any financial institution, whether in a single or joint account. The burden of establishing that funds are exempt rests on the defendant using the first-in first-out accounting method.

Mississippi Wage Garnishment

The first 30 days' wages after service of garnishment are exempt.

After 30 days, 75% of wages are exempt.

Employer may withhold and pay when total judgment is collected but must pay at least once per year unless ordered otherwise.

Garnishments are paid in the order they are served. The first one served must be paid in full before the second one can be paid.

Child support withholding orders are not considered garnishments; thus they are paid regardless of priority. If a debt garnishment and child support withholding order are pending at the same time, the amount to be withheld pursuant to the child support order does not reduce the amount subject to the debt garnishment.

Missouri Wage Garnishment

The maximum amount that may be held from a person's weekly wages, after withholdings required by law, is the lesser of:

1. 25% of the wages,

2. 10%, if the person is head of a family and a Missouri resident, or

3. The amount by which the weekly earnings exceed thirty times the federal minimum hourly wage. Mo. Rev. Stat. §525.030.

Note: Child support garnishment may be subject to a higher percentage of deduction.

<u>Montana Wage Garnishment</u>

Montana Code Title 25, Chapter 13, and entitled 'Execution of Judgment' authorize wage attachment. There is no continuous garnishment for employees provided by the Montana Legislature. The wage exemption statute is identical to the Federal exemption statute and an execution writ is good for 60 days.

<u>Nebraska Wage Garnishment</u>

Although Nebraska allows wage garnishment it rejects the Federal exemptions.

1. Proceeds or interest from payments or settlements under the Worker's Compensation Act (Neb. Rev. Stat. §48-149), except for attorney's fees approved in writing by district court (Neb. Rev. Stat. §48-108);

2. Fraternal insurance benefits (Neb. Rev. Stat. §44-l072);

3. Certain wages; all proceeds, cash values and benefits accruing under any annuity contract, policy or certificate or life insurance payable upon death of insured to beneficiary other than estate of insured, or under any accident or health insurance policy, to the extent of $10,000,00 (Neb. Rev. Stat. §44-371).

<u>Nevada Wage Garnishment</u>

Nevada applies its own statutory exemptions that are generally more liberal than the Federal Exemptions. Nevada allows a wage garnishment of up to 25% of the debtor's disposable earnings. Child support garnishments take priority regardless of when the levy was received. A wage garnishment is good for one hundred and twenty days (120) from the date of service of the writ on the employer.

<u>New Hampshire Wage Garnishment</u>

New Hampshire has a non-continuous wage attachment "on the books," in RSA 512. The process is seldom employed due to severe restrictions on its use, the cost, and the fact that many judges do not favor it and have discretion to disapprove it.

The lien applies only to wages earned post-judgment. Under New Hampshire procedural rules, seeking a garnishment would therefore require the filing of a new lawsuit each time such an attachment is sought. The attachment only applies to wages earned up to the date of service. In other words, there is no provision for an ongoing garnishment.

There is an exemption for earnings up to 50 times the minimum wage. New Hampshire does have a mechanism for establishing a court-supervised payment plan under RSA 524. This creates no lien against earnings, and is enforceable through contempt should the debtor default.

New Jersey Wage Garnishment

10% gross 25% of disposal earnings whichever is less but no execution on gross wages of $154.50 or less a week (Source: 15 USC, 1671 et seq,: 29 C. F. R., 5870; N.J.S.A. 2A: 17-50).

New Mexico Wage Garnishment

New Mexico Law provides for continuing wage garnishments. The employer must withhold up to 25% of disposable earnings from each paycheck beginning on service of the writ and continuing until the judgment is paid in full.

If previous garnishments are in effect when the writ is served, the earlier writ(s) must be satisfied before withholding begins on the later writ. Up to 50% of disposable wages is subject to a garnishment for child support, making subsequent garnishments for debts ineffective.

Pre-judgment garnishment of wages is prohibited.

New York Wage Garnishment

The maximum amount recoverable is ten percent (10%) of gross income, or the federal maximum, whichever is less.

If the debtor is subject to garnishment for alimony, support or maintenance, the combined garnishments cannot exceed twenty-five percent (25%) of disposable earnings.

Income executions are prioritized by order of delivery to the Sheriff, but garnishments for alimony support or maintenance always take priority.

The execution is a two-stage process. First, the sheriff serves the execution on the debtor at his or her residence. If the debtor does not begin making payments within twenty (20) days, the sheriff levies on the employer

North Carolina Wage Garnishment

Unless the debtor has substantial funds on deposit and no family dependent on those funds for support, garnishment of wages is not generally helpful in collecting other claims except:

1. To enforce an order for child support (G. S. § 110-136),

2. To recover unpaid taxes (G. S. § 105- 242(8), 105-368, 106-9.4), and

3. To enforce a judgment for payment of medical services provided by a "public" hospital (G. S. § 131E-49),

Under G. S. § 1-362, the debtor's earnings for personal services within 60 days prior to the order cannot be applied to the debt if it appears that the earnings are necessary for the use of the debtor's family. Further, future earnings have been excluded from the scope of execution under Harris v. Hinson, 87 N.C. App. 148,360 S.E.2d 118 (1987).

North Dakota Wage Garnishment

The maximum part of an individual's aggregate disposable earnings for the work week that is subject to garnishment in North Dakota is the lesser of:

1. 25% of the disposable earnings, or

2. The amount of the disposable earnings that exceed 40 times the federal minimum hourly wage.

Note: The maximum amount subject to garnishment must be reduced by $20.00 for each dependent family member residing with the defendant.

Ohio Wage Garnishment

Under O.R.C. §2716.02, any person seeking a post-judgment wage garnishment must send a written demand to the judgment debtor at least 15 days and not more than 45 days before seeking a garnishment order. Ordinary U.S. Mail with a certificate of mailing may serve through the court; by certified U .S. Mail, return receipt requested; or the demand. It must be sent to the judgment debtor's last known place of residence, and the demand must follow the form specified in this statute.

O.R.C. §§2716.03 and 2716.05 specify the format for the garnishment motion, order, and notice. O.R.C. §2716.03 further provides that there can be no wage garnishment if the debt is subject to a debt scheduling agreement through a debt counseling service, unless the debtor or the debt counseling service fails to make payment for 45 days after the payment due date.

Under O.R.C. §2716.04, the garnishment order is a continuous order, requiring the garnishee to withhold from the debtor's earnings each pay period until the judgment is paid in full.

Up to 25% of the debtor's net disposable income may be garnished. However, this order may be interrupted by the filing of a garnishment by another judgment creditor, in which case:

1. The first garnishment order shall remain in effect for 182 days, if the subsequent garnishment is the same priority, or

2. The first garnishment order shall immediately cease to be in effect if the subsequent garnishment is a higher priority, such as a child support order or tax levy.

Oklahoma Wage Garnishment

Oklahoma specifically authorizes Post-judgment wage attachment. 12 -1151 et al.

Entry of judgment is a condition precedent to a wage attachment. 12 O.S. § 1151 (West 2000).

The judgment creditor has the option of a non-continuing wage attachment that lasts one pay period, or a continuing wage attachment that lasts 180 days.

75% of the debtor's wages are exempt from wage attachment 12 O.S. Sec. 1151.

Note: This 75% exemption could increase if the debtor establishes hardship.

Oregon Wage Garnishment

Exemption is 75% of disposable earnings or 40 times the federal minimum hourly wage. See the following statutory guidelines and limitations. ORS 29.125, .145 and .225 and 23.175.

Pennsylvania Wage Garnishment

No wage attachment in this state except for taxes and child support.

The Pennsylvania Department of Revenue is authorized to garnish wages without obtaining a court order for collection of unpaid state taxes. The Department will first notify taxpayers of its intent to contact their employers to begin withholding. If a taxpayer fails to resolve the tax liability, the taxpayer's employer will be ordered to begin garnishing wages and make payments to the Commonwealth. Employers may retain up to 2% of the amount collected to compensate for costs of additional bookkeeping.

Rhode Island Wage Garnishment

Under Rhode Island law, the maximum amount which can be legally withheld from an employee's wages by an employer is twenty-five (25%) percent of the employee's disposable earnings.

Disposable earnings are defined as the earnings of an individual after deduction of taxes, social security and temporary disability contributions.

Individuals are exempt from attachment for one year if they have collected social security or state assistance.

South Carolina Wage Garnishment

Wage attachment is prohibited in South Carolina. SCCLA 37 -5-104.

South Dakota Wage Garnishment

Post-judgment wage attachment is specifically authorized by SDCL 21-18-1.

20% of disposable earnings but only for a 60-day period and this 60-day period can be renewed regularly.

Under SDCL 21-19-17, the earnings of the debtor that are immediately necessary for the support of the debtor and his family are exempt from attachment. Examples include money needed for rent, food, medical expenses, and clothing.

Aid, such as welfare, social security, and child support, are exempt from attachment.

Tennessee Wage Garnishment

A debtor may obtain relief from garnishment by filing a "slow pay" motion, supported by an affidavit of his or her existing debts.

While no specific statutory provision so requires, most judges require that a debtor pay an amount sufficient to pay post-judgment interest and some portion of the principal.

A debtor's wages may be attached before judgment is rendered if the debtor attempts to evade service of process.

Texas Wage Garnishment

Wages cannot be attached or garnished, except for child support.

Income that is not a wage can be garnished or ordered turned over to a receiver.

Bank accounts, rents and royalties can be garnished.

Exemptions include social security benefits.

WARNING For individuals living in Texas who are paid from an out of state location, there is case law (Baumgardner vs. Sou Pacific 177 S.W. 2d 317) to support taking a judgment from Texas, domesticating the judgment in the foreign state, then filing the wage garnishment there. Many creditors have used this strategy successfully.

Utah Wage Garnishment

Wage garnishment is valid for 120 days.

The maximum part of an individual's disposable earnings for the pay period that is subject to garnishment is the lesser of:

1. 25% of the disposable earnings for the pay period, or
2. The amount by which the disposable earnings exceed 30 times the federal minimum hourly wage.

Vermont Wage Garnishment

75% of debtor's wages are exempt from attachment except for a consumer debt and then 85% of the debtor's wages are exempt.

If at the hearing a debtor can show his income is used for reasonable and necessary living expenses for himself and that of his legal dependants, his income may be exempt.

If an order to garnish is obtained, it continues until the judgment is paid in full or his employment is terminated.

Virginia Wage Garnishment

Virginia uses the federal wage exemption.

The maximum part of disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed the lesser of;

1. 25% of disposable earnings for that week, or
2. The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum wage.

Virgin Islands Wage Garnishment

Garnishment is subject to ten percent (10%) or so much of gross wages as exceeds $30 due or to become due to judgment debtor from employer-garnishee for any weekly pay period, or its equivalent for any pay period of different duration.

The above percentage limitation does not apply in case of execution of judgment, order or decree of any court for payment of any sum for support or maintenance of a person's spouse, former spouse, or children, and such execution, judgment, order or decree will, in the discretion of the court, have priority over any other levy against judgment debtor's wages.

In case of execution upon judgment, order or decree for payment of such sum for support of maintenance, limitation will be fifty percent (50%) of gross wages due or to become due to any person per pay period or periods ending in any calendar month. (Title 5, Section 522, Virgin Islands Code).

Washington Wage Garnishment

Garnishment is allowed under RCW 6.27.005. It is limited to greater of 25% of disposable earnings or thirty times the federal minimum wage. RCW 6.27.150 and 6.27.010

West Virginia Wage Garnishment

Wage attachment is permitted in West Virginia through use of a suggested execution. A suggested execution is an order issued by the clerk directing the judgment debtor's employer to withhold a portion of the debtor's wages and pay them over to the creditor.

The creditor must have a valid judgment and must sign an affidavit establishing that the debtor's disposable income exceeds 30 times the federal minimum wage after deduction of state and federal taxes, See West Virginia Code §§ 38-5A-l to 13; 38-5B-l to 16.

West Virginia law also allows judgment creditors to file a suggestion of personal property, a writ of execution and a judgment lien creditor's action.

Wisconsin Wage Garnishment

Wage garnishment actions are considered separate actions under Wisconsin Statute, requiring the payment of a filing fee and issuance of the earnings garnishment notice to the employer and employee, which can be accomplished by first class mail.

Upon issuance of the earnings garnishment, the garnishment will remain in effect for a period of 13 weeks. At the end of this time period, a new garnishment action must be commenced, unless the previous garnishment was voluntarily extended.

Typically, 20% of a debtor's net earnings after withholding taxes and Social Security can be taken by a creditor. A debtor does have the right to assert various exemptions to the garnishment, including income below the Federal Poverty Guidelines, eligibility to receive foods stamps or medical assistance, or court-ordered assignments of child support that exceed 25% of the debtor's wages.

Wyoming Wage Garnishment

Section 1-15-408: A writ of post judgment garnishment shall attach to the lesser of twenty-five percent (25%) of 8disposable earnings, or that amount of disposable earnings which exceeds thirty (30) times the federal minimum hourly wage.

Section 1-15-502: Garnishment (upon the wages of the defendant) shall be a lien and continuous levy against earnings due until ninety [90) days has expired or until the writ is dismissed.

Section 1-15-504: When more than one (1) writ of continuing garnishment has been issued against the earnings due the same judgment debtor, the garnishment shall be satisfied in the order of service on the garnishee.

Winning the Collection Game®

Did you know that for the last thirty years, creditors have been able to coerce payment out of their customers when they had nearly no money to pay, simply because of the credit reporting system? Did you know that nearly every collection lawsuit filed by creditors and third party debt collectors up until the year 2000 resulted in judgment for default because the defendant was either not served or did not understand the meaning or consequences of the collection lawsuit?

This discovery led to the writing of a formal procedure to assist people in successfully defending against these collection lawsuits. The concept is quite simple, where nearly all of the lawsuits resulted in default judgments favoring the banks and collectors, educating people about the benefits of just filing a simple answer literally stopped millions of dollars from being collected this way. This drastically changed the means that collection attorneys had been using to obtain judgments, wage garnishments and attachments to other property.

First published in 1998 by John Gliha, under the title Winning the Collection Game®, it became known as "debt elimination".

This term became popular after the publication of Winning The Collection Game®, and it was originated from the subscribers to this original text, not by the text itself. Debt Elimination does not include negotiating for a reduced payment or settlement, consolidation, or bankruptcy. Debt Elimination involves the method of deliberately not making voluntary payments to creditors or debt collectors and taking every legal defense against whatever collection process may result.

Debt Elimination includes the strategies and methods of legally avoiding payment of account balances claimed to be owed to creditors and/or debt collectors.

Although the idea of simply not paying creditors is ancient, the deliberate refusal to pay and use of anti-collection strategies was first published by John Gliha in Winning The Collection Game in 1998. He first began using these strategies in 1992 after discovering that the banking system today is nothing more than an elaborate counterfeiting scheme. Very similar methods were again published in 2002 by an attorney, Stanley G. Hilton, J.D., M.B.A., who had been practicing these strategies since approximately 1975. His work was recently published under the title To Pay or Not to Pay. Over the last hundred years, the collection system has advanced very much. Winning The Collection Game® simply takes advantage of the same legal system to defend against the claims of the creditor. It is absolutely legal.

Non-payment is the oldest method of debt elimination, literally over thousands of years.

How does Winning The Collection Game® compare with consolidation and bankruptcy? Winning The Collection Game® is private. It reduces your credit rating with the chance of restoration. You choose which accounts to eliminate and to keep. This system has statistically resulted in reducing $80,000 in unsecured debt down to under $5,000 within the first year. Consolidation requires that all accounts be consolidated, reduces your credit rating with no chance of restoration. Most people pay a great deal of money in making payments to the consolidator, with the result that the accounts revert back to the original creditor and the balances returned or even more than when consolidation began. Bankruptcy is not private. It requires disclosure and liquidation of all assets and debts and ruins your credit history for a minimum of ten years.

Many people have contributed to the research that supports the legal foundation in defending against collections. The most comprehensive work on this subject was written by G. Edward Griffin and published in his The Creature From Jekyll Island. This text provides the best ten reasons to abolish the Federal Reserve System. Gliha's work published in Winning The Collection Game® is the practical application of this type of research, although each was developed entirely independently.

Today, the strategies of Winning the Collection Game® are implemented through a network of attorneys and a system which provides an outsourced service to the network attorneys to offset the billing hours for each collection defense. This enables attorneys to provide a very effective defense at a very affordable cost to consumers. This service was not available until this service was organized by Due Process LTD and John Gliha who provides the sales and marketing for each law office and also the services which allow each attorney to offer their representation at both a profitable price for them, and a fair price to consumers with debt collection problems.

Your credit history will eventually appear the same as if you simply stopped paying, mostly with charge offs. You are trading bad credit in exchange for the cash saved by not paying these credit statements.

Remember that continuing to pay when it is inevitable that you will not be able to continue paying in the amounts demanded by the creditors is just wasting money, you will not protect your credit and you will lose your cash and buying power.

You can expect to be sued but a timely response and following the strategies of Winning the Collection Game® will greatly reduce your chances of a judgment lien.

The purpose of binding arbitration from the creditor's perspective is to avoid discovery in court, having to argue the merits of a collection and escaping liability under class action lawsuits.

The information contained in Winning the Collection game® pertains to collections involving unsecured credit card accounts (these include signature loans, credit card accounts, overdraft agreements and balances claimed to be owed after a repossession or foreclosure). It does not include charge accounts unless underwritten by a bank creditor, or lease agreements, or phone service agreements nor is it for hospital bills unless any is assigned to a third party debt collector.

You will not lose your option to file bankruptcy.

No other organizations authorized publish these strategies and those that make similar claims have plagiarized parts of Winning The Collection Game®. We have investigated everyone making the same claims and each time we discover that it is just another perversion of Winning The Collection Game®.

These strategies will not help with your mortgage, auto loan or student loans but by assisting you in retaining your cash, you will be in a better position to maintain payments on these accounts.

The time to understand the strategies of Winning the Collection Game® is typically three months and is written for anyone with a high school education and basic understanding and access to a computer.

Bad credit is not permanent, and not paying what the creditor wants on the creditor's schedule, regardless of the reason, will result in bad credit, even if you make payment arrangements or settle with a lump sum payment. Eventually, the items on your personal credit file will expire, within seven years from the last payment date, and you will regain your ability to improve your credit rating.

If you have a judgment lien for any debt other than for alimony or child support, you can calculate what amount of money would be taken from your paycheck because of the limitations imposed by the Consumer Credit Protection Act.

Do the math! You'll see for yourself why having your wages garnished is not the big deal you think it is.

(a) What is the total gross pay before any deductions? $_________

(b) Amount deducted from pay for Social Security, Federal Income Tax? $_____

(c) Subtract (b) from (a). This is disposable earnings $_________

(d) Are wages paid once every week, once every two weeks, once a month, or two times per month?

- If once every week, enter $154.50
- If once every two weeks, enter $309.50
- If two times per month, enter $334.75
- If once per month, enter $669.50

$________

(e) Subtract (d) from (c). If (e) is $0 or less, STOP. NO WAGES MAY BE WITHHELD.

If (e) is more than $0, go on to (f) $_______

(f) Divide (c) by 4 $________

(g) Enter the lesser of (e) or (f) $________

(h) How many children does the debtor have under the age of (16) living in the state. _______

(i) Multiply (h) by $2.50 per week ($5.00 if wages are paid every two weeks; $5.42 if paid two times per month; and $10.83 if paid once per month) $_______

(j) Subtract (i) from (g). This is the amount of wages to withhold. If this amount is $0 of less, nothing should be withheld from wages $_______

–You didn't tell me there would be any math!!!

This should demonstrate the superior benefits to allowing a collection to result in a wage garnishment. The amount garnished is much less than the total amount you were paying all of your creditors and by having the garnishment, all other creditors are precluded from forcibly taking your money provided that you allowed the maximum to be garnished and did not file an objection or exemption.

Add in the benefits of the Nominee Exchange® if you qualify for the program and you can see the incredible benefits of putting your own corporation in the place of your first creditor, judgment lien holder and wage garnishment.

Nominee Exchange®

The Nominee Exchange® is the only method today that enables anyone to protect his or her employment income from a wage garnishment. Other benefits of the program are that you will have a bank account which cannot be levied by any third party and your home equity will be protected against any third party without transferring title or ownership of the asset.

This is a method of legally blocking creditors from obtaining a wage garnishment, bank levy or taking the equity from your home without transferring assets. There is no other service of its kind that will protect against wage garnishment or bank levy. The method qualifies for a utility patent under United States and international patent statutes and is currently in a patent pending status.

It was developed over a two year period by the founder of the debt elimination industry, and author of Winning The Collection Game®, John Gliha.

And it's all completely legal.

It takes full advantage of a Federal statute known as the Consumer Credit Protection Act. The program gives individual debtors protections very similar to what major corporations enjoy under Chapter 11 bankruptcy, without having to file Chapter 11, Chapter 7, or Chapter 13.

The Nominee Exchange® creates a superior lien over all other creditors. This superior lien is then used as leverage to create a new business credit file that you can use for any purpose while avoiding future personal liability for debt. The process does not involve notifying your employer, so no money will actually be taken from your check unless you want it to be taken.

You will also control a business bank account which you can use in your name, but since it isn't actually owned by you, it cannot be levied against for your personal debts.

The Nominee Exchange® program will also increase your personal net worth and provide you with the use of an immediate corporate net worth you can leverage in building a new business credit profile that is completely separated from your personal credit. Further, you will have the ability to sell your corporation at any time since its value will increase by about one thousand dollars per year. Selling your corporation will not change the benefits you have achieved in the program.

These benefits can last for the rest of your lifetime unless you, yourself, decide to relinquish them.

Upon completion of the Nominee Exchange® program, you will be in a very advantageous position if or when you might choose to settle any credit or collection accounts. The accounts can then be settled under your terms and not those of the creditor or collector. No account is required to be settled, however. This is purely an option after completing the program. In addition, you will be able to begin acquiring income producing assets with your new business enterprise and stay out of debt forever while building wealth and a good business reputation.

The Nominee Exchange® is a registered trademark of Due Process, Ltd., a company that has been providing debt resolution services since 1993. Our primary clients are individual consumers who are overwhelmed with debt, often over $50,000 in unsecured credit card debt alone.

The purpose of the Nominee Exchange® is not to avoid the repayment of legitimate debts. It will place you in a position to pick and choose which, if any, debts you want to pay, and how much is solely left to your discretion. The purpose of the Nominee Exchange is not to defeat creditors, it is a way for you to obtain financing and increase your net worth using a solid business organization and intelligent financial planning.

Because of offering our first program (the only copyrighted work in the debt resolution industry) for twelve years, we have established business relationships in nearly every county of all 50 states. Currently, we have no direct competitors and the recent federal bankruptcy legislation has created an enormous demand for the services we provide.

Unlike conventional debt settlement programs, which requires clients to repay at least 40% of their total debts (and has income tax consequences on the forgiven portion), The Nominee Exchange® saves our clients tens of thousands of dollars. In fact, most of our clients come out of the program actually in better financial shape than when they went in.

Who qualifies?

The Bankruptcy Reform Act of 2005 has made Ch 7 Bankruptcy almost impossible to file.

People who would have been eligible for a chapter 7 filing prior to the change in the bankruptcy law are perfect prospects for the Nominee Exchange®. These are people with employment income who have a minimum of $20,000 in unsecured debt from credit cards, collection agencies and junk debt buyers, medical and hospital bills, unpaid utility or phone bills, collection problems following a vehicle repossession, and collections resulting from defaulted lease agreements.

The debts which are excluded or which this program cannot prevent the collection of are official student loans which are guaranteed by the United States Department of Education, state and federal income taxes, mortgages, car loans, and court orders for alimony or child support. Also, the program does not prevent the imposition of penalties against a driver license for unpaid traffic tickets.

The more unsecured debt an individual has, the better prospect s/he is for the Nominee Exchange®. People who would seek out or be qualified for a debt settlement program or consolidation are excellent prospects because the costs for these programs are enormous compared to the Nominee Exchange®.

Nominee Exchange® is THE alternative to bankruptcy.

Because creditors and collectors know that because bankruptcy is no longer a feasible option for nearly every consumer who would consider it, they are much less willing to offer lower settlements. Furthermore, settlements reached through settlement firms will cause additional federal income tax liabilities for imputed income (forgiven debt).

The most qualified individual is the employed person who is no more than three months behind on any eligible credit or collection account (no collection attempts from an attorney) and has at least $20,000 in unsecured debt.

The detriments to your credit file will be the same as if you went through any debt settlement, management, consolidation or bankruptcy process.

The elements of the process are traditional and have been used by attorneys, estate planners, and financial planners for the rich and famous for nearly a hundred years. The reason why it is able to obtain a United States Patent is due to the manner in which it is being applied along with a few alterations to accomplish the objective of securing your paycheck and bank account against any third party levies or garnishments.

You will not need an attorney to achieve the benefits of this program.

Your paycheck and new bank account will be totally protected from the following types of creditors: banks, lenders, third party debt collectors, bank issued credit card accounts, hospital bills, new or future lawsuits and judgment creditors. The program will not protect your paycheck from a federal or state income tax or administrative wage garnishment, or a student loan garnishment or a child support order, but it will protect your banking activities from all of these creditors.

The process cannot be considered fraudulent in any way, such as under the Uniform Fraudulent Conveyance Act because it does not make you insolvent and is not completed without fair consideration. Furthermore, no assets are transferred or conveyed, except that personal home equity is encumbered yet this is of no consequence since it is incidental to the process.

What if someone were to investigate me or this process to say that it was fraudulent or that I used it in a fraudulent way to escape my creditors?

Every one of these possibilities is anticipated and not a factor in any way simply because the actual process is very easy to discover, so it's not a mystery to anyone wanting to scrutinize the arrangement. And of course it is perfectly legal. Especially considering the fact that you employed a process that was awarded a patent by the United States Government, you can expect to have none of these types of difficulties. The purpose of this service is to enable you to obtain financing to pay any debts you choose, begin investing and acquiring new assets, in a way that best serves your needs while also protecting your employment income.

Attorneys do not officially endorse this program simply because most will not endorse anything; even services provided by accountants or their own colleagues, simply because they perceive it to create a potential liability and would not be able to maintain their professional liability insurance policy. Almost any attorney will not advocate this program unless he or she can profit from it in some way. Because there is no need to involve an attorney in the process, nearly every attorney will advise against using it. For many attorneys in the consumer debt business, the Nominee Exchange® represents a very competitive service to the ones they are limited to providing.

Nominee Exchange® is a competitive service to attorneys.

Why is this process able to prevent bank levies from any third party?

The most proven method of protecting your bank account from levy is to add another signer, in some states it requires two additional signers, and modify the signature card so that neither party has exclusive rights to withdraw the funds. Instead of Bill or Barbara, the signature card would require Bill and Barbara.

To give yourself an additional level of versatility and protection, use a limited liability corporation with these two signers. Nothing says that the name of the corporation cannot be your name, and nothing says that just because it is, that the corporation can be made to pay your personal debts. In the above example, Bill and Barbara would be signers for the corporation in your name, assuming your name is “Jim Smith”, the corporate LLC name could be “Jim Smith LLC”.

The legal basis that prohibits creditors or third parties from imposing any levy against a bank account explains that where the party levied against does not have exclusive rights to withdraw the funds, the creditor cannot enforce a levy against the account because of the competing interests of other signers.

In the supreme court decision of U.S. v. National Bank of Commerce, 86 L.Ed.2d 565 (U.S.Ark. 06/26/1985); 105 S.Ct. 2919; U.S.Ark.,1985; 86 L.Ed.2d 565, 53 USLW 4856, 56 A.F.T.R.2d 85-5210, 85-2 USTC P 9482), dated June 26, 1985, the following was decided:

Supreme Court of the United States

UNITED STATES, Petitioner

v.

NATIONAL BANK OF COMMERCE.

No. 84-498.

Argued April 15, 1985.

Decided June 26, 1985.

Government filed notice of levy upon accounts of taxpayer with bank. On cross motions for summary judgment, the United States District Court for the Eastern District of Arkansas, Granett Thomas Eisele, Chief Judge, 554 F.Supp. 110, entered summary judgment for the bank. Government appealed. The Court of Appeals for the Eighth Circuit, 726 F.2d 1292, affirmed. Certiorari was granted. The Supreme Court, Justice Blackmun, held that the IRS had a right to levy on the joint accounts of the taxpayer where the delinquent taxpayer had an absolute right under state law to withdraw from the joint accounts, without notice to his codepositors, and the bank, in its turn, was obligated with respect to the taxpayer's right to that property, since state law required it to honor any withdrawal request he might make.

The issue presented is whether the Internal Revenue Service (IRS) may lawfully seize a joint bank account for payment of a single codepositor's delinquent taxes when it does not know how much, if any, of the account belongs to the delinquent.

How does this process legally strip equity from your real estate?

The Secret Sauce behind Nominee Exchange®

There are many methods of equity stripping, some legal and some not. Those which are not legal involve creating a lien or encumbrance that is without real commercial value or fair consideration. Other methods seek this objective with the direct and primary objective being to defeat potential creditors.

The Nominee Exchange® allows three unrelated individuals to work together in obtaining financing and increasing their creditworthiness to regain solvency and then build personal wealth. This is accomplished by first creating a loan obligation that is secured by a judgment lien.

The purpose of the obligation is to obtain financing against the future or anticipated income of the borrower. In exchange, the lenders benefit by holding a judgment lien to secure their interests and subsequently obtain corporate credit for the purpose of purchasing assets. The lenders are able to sell or collateralize their judgment lien for cash or more credit.

The arrangement is undertaken by three individuals who are strangers. In exchange for the financing obtained against anticipated income, the borrower provides the same or a reciprocal benefit to the third individual by entering into a loan agreement with the second individual.

Likewise, the third borrower is provided financing against his anticipated income by the other two individuals, each benefiting mutually thereby.

This arrangement enables each of the three individuals to obtain financing through a new business organization and increase personal wealth, credit worthiness and acquire income producing assets without incurring additional personal debt.

In fact, this process enables those with possible or potential debt problems to become solvent and reach a better financial position from which to make arrangements to pay any obligations. Instead of attempting to pay any obligations from a situation where he is insolvent, this process places the individual in a position of solvency and a position of financial growth. He is then better able to reach payment terms, especially terms which are equitable for both sides instead of suffering against the overwhelming collection power and ability of multi-billion international creditors (as in many instances).

Equity stripping is not a new concept. The essential of it is that even though you continue to have the control and enjoyment of an asset, there is little or no equity in the asset for creditors to get. Usually, this is accomplished by borrowing against the asset and giving another party a lien for the debt obligation. But equity stripping comes in other and more sophisticated variants, too.

For example, let's say that you live in a $500,000 home in a state with a $100,000 homestead exemption. If your home was paid off, that would expose $400,000 (the difference between the sale value and the exemption) to creditors. Instead, you just never pay down the mortgage to where you have more than $100,000 in equity.

If something happens and you have a judgment entered against you, the creditor will probably look at your property records, estimate the value of your house, and decide that it is not worth his time to foreclose because the homestead exemption would protect the rest of your equity. Because foreclosure is time-consuming and expensive, in terms of up-front costs for an auctioneer and advertising, the creditor is apt to forget about your house and look for easier assets to grab. The bank's mortgage gives it a "priority lien" over the judgment of the creditor. The concept of the "priority lien" is central to most equity stripping strategies. This is as simple as it gets, you have just successfully equity-stripped your home.

Yet, even with such a simple equity strip as a home mortgage, there are difficulties for the debtor. The main difficulty is that the bank will of course want to be paid on the mortgage, meaning that you will have to come up with the money every month to make your payments. If not necessary, this can be very expensive for you. If the creditor has been successful in freezing your free cash and garnishing your pay check, you might not be able to make these payments; thus, resulting in the bank foreclosing on its loan.

If a creditor freezes your income and accounts, how can you pay your mortgage?

Thus, we are confronted with one of the main problems with equity stripping, which is how to provide protected cash flow to make the loan payments as they come due. Many equity stripping arrangements fail because no one considered the cash flow requirements.

Friendly Loans

Because you don't want to end up in foreclosure if you have to miss a few payments, you may decide to arrange a "friendly" loan with a business entity or trust controlled by you or someone close to you. Even though your brother has loaned you money, he is not likely to foreclose if you get behind in your payments.

Friendly loans often help alleviate the cash flow problems, but they introduce problems of their own. The first problem is that for equity stripping to work, the loan that gives rise to the priority lien has to be a real loan. There has to be a compelling economic or financial reason why the loan was made in the first place, and the explanation must be one capable of being made with a straight face. Further, the loan must be properly documented, the lien immediately filed, and, most importantly, payments on the loan need to be regularly made according to its terms.

It is this last requirement that really hurts most “friendly loan” arrangements. (i.e., people set up the loan and place the lien, but then they never make any payments or otherwise respect the loan as a real one).

In any given year, the average civil judge sees dozens of attempts by distressed debtors to equity strip their property. Most judges can spot bogus loans a mile away. They look to see if the loan was treated as a real loan with real payments, or whether the lien was simply placed on the property and the entire arrangement was disregarded until the creditor showed up.

“Friendly Loans” are easily identified as bogus

Bogus liens can be set aside by the court as shams or as fraudulent transfers. Fraudulent transfer laws specifically target this type of friendly insider transaction.

A similar problem involves control. Many equity stripping arrangements are set up so that the wife is extending a loan to the husband and receiving a lien on the husband’s assets. In some states, this arrangement can work, or at least create a hurdle that the creditor will have to spend some time and money overcoming. Thus, friendly liens work, so long as your friend stays friendly to you.

Equity Stripping and Taxes

Of course, where there is interest – even deferred interest and balloon payments - taxes are an issue. Taxes must be paid on interest payments (and on accrued but unpaid interest too in most cases), and the interest, may not be deductible to the payer. So, even in the case of a husband and wife who are lender and borrower, the lending spouse will have interest income, and the borrower spouse may not get an interest deduction. This is an issue whether or not the spouses file a joint return. If the interest payments are not deductible, then a tax liability that did not exist previously may have been created.

Certainly, if the interest income is being reported correctly to the IRS, it may help establish the validity of the loan. Conversely, if there is no such reporting, the arrangement will appear to be a sham. Indeed, many equity stripping arrangements are unwound because of the tax treatment of the interest on the loan.

To avoid the tax problems, equity stripping arrangements might be implemented using a grantor trust as the counter-party, so for tax purposes, it is a nullity. Of course, this gives a later creditor the chance to come in and argue, “Well, if it is a nullity from a tax standpoint, then it should be a nullity from a civil standpoint too.” Though logically suspect, this sort of rationalization may appeal to judges.

With a personal residence, keep in mind that for a home equity line of credit, only the interest on the first $100,000 is deductible. This may substantially impair the economics of many programs that are designed to equity strip personal residences. At any rate, you should never equity strip a primary residence unless there are funds immediately available somewhere with which to make mortgage payments.

MONSTERS
UNDER
THE
BED

I couldn't just begin by talking about one of the most frightening subjects in the debt collection experience without a brief introduction.

Or, well maybe I could have, but it just seemed appropriate to explain a few things first.

John Gliha

It's important to understand a few facts. First, an effort to collect a debt begins with a telephone call. The call is made to a phone number that you provided, and chances are, it is to the place where you live or work. This is accomplished from information you provided at some time in the past. The reason I want to make an important note about the fact that you provided the information that is now able to be used in a way that you do not appreciate, is because you have alone the power and control to make changes and adopt practices that will end the collection problems, even without payment.

Next, it is my intention that after considering the information in this segment, you will begin to realize that the debt collector needs your participation and cooperation in order to perpetuate the collection process. And the most important aspect to remember is that a collect effort is nothing different than a sales call.

One last important fact to remember is that the law is on your side. It is a crime to make unwanted phone calls, no matter what the reason and no matter what the relationship is between the caller and person being called. In most states, it is a class 1 misdemeanor punishable by up to six months in jail for being convicted of making unwanted phone calls. You can easily locate your state statute regarding "harassment and unwanted phone calls" but I have included the pertinent section from the Fair Debt Collection Practices Act here:

> Section 806(5) prohibits contacting the consumer by telephone "repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number."
>
> 1. Multiple phone calls. "Continuously" means making a series of telephone calls, one right after the other. "Repeatedly" means calling with excessive frequency under the circumstances.
>
> Section 806(6) prohibits, except where section 804 applies, "the placement of telephone calls without meaningful disclosure of the caller's identity."
>
> 1. Aliases. A debt collector employee's use of an alias that permits identification of the debt collector (i.e., where he uses the alias consistently, and his true identity can be ascertained by the

employer) constitutes a "meaningful disclosure of the caller's identity."

2. Identification of caller. An individual debt collector must disclose his employer's identity, when discussing the debt on the telephone with consumers or third parties permitted by section 805(b).

3. Relation to other sections. A debt collector who uses a false business name in a phone call to conceal his identity violates section 807(14), as well as this section.

Regarding written collection notices in the mail, a few facts are also important to remember. You initially provided the address that the collector is now using to send you demands for payment. You provided the credit information that is now being used to coerce you into making payment arrangements, believing that this will somehow retain your good credit rating. This turns out to be a false belief we all have been conditioned into having and that the collectors tacitly use to intimidate you into making payments.

A written collection notice is nothing more than a written collection notice. In other words, it's not a loaded gun pointed at your head, it's not a license to remove your right arm, it just a piece of paper. It's a desperate means of selling you some unidentified or ambiguous (non-existent) benefit in exchange for making payments, entering into new terms, waiving rights, waiving protections, and giving up even more information that can and will be used against you.

The more written collection notices you receive from the same creditor or third party debt collector, the longer they intend to wait before suing you, assuming that is likely in the first place. Chances are if the collection notice is from the creditor's in-house collection department, or the creditor itself, or a third party assignee, all unsigned or not signed by an attorney, they do not intend to file a lawsuit anytime soon. If the collection notice is from an attorney, but in a different state, even though they know where you live, chances are again, they are not serious about doing what is necessary to collect, that is file a lawsuit.

It usually takes six to eighteen months before any local attorney supported collection actions will begin, if your account fits the profile for suing in the first place. That is, it is not profitable for the creditor to sue anyone and everyone over a collection account; fortunately, only a few of us in a few situations will qualify for this possibility.

What is to Fear in a Collection Phone Call?

The Federal Trade Commission is a great source of information for identifying abuses within the collection industry. There are many. Part of the reason is that collectors in general have policies that routinely violate or allow these violations. A few abusive collection attempts are not isolated and we've included an example list reported by the Federal Trade Commission so you can better understand that you are not alone.

Nationwide Credit, Inc., of Atlanta, Georgia, agreed to pay a $1 million civil penalty as part of a settlement with the Federal Trade Commission to resolve allegations that the company violated the Fair Debt Collection Practices Act (FDCPA). The $1 million civil penalty is the largest ever in a debt collection case.

A judge freezes the assets of a collection agency, Check Investors, Inc., that illegally threatened consumers with arrest and criminal prosecution. Since 1995, Check Investors Inc. of Secaucus used intimidation to collect at least $10.2 million from about 42,100 people - many of whom did not even owe any money.

Another collection agency, Payco American, agreed to settle with the Federal Trade Commission and pay $500,000 in civil penalties for violating the Fair Debt Collection Practices Act.

Payco illegally disclosed consumer debts to third parties, used obscene or abusive language, and falsely threatened arrest, garnishment of wages, or other legal action against consumers from whom it was attempting to collect debts for clients.

Account Portfolios, Inc. (API), and a subsidiary, Perimeter Credit, L.L.C., agreed to pay $300,000 in civil penalties as part of a settlement with the Federal Trade Commission to resolve allegations that they violated the Fair Debt Collection Practices Act (FDCPA) when attempting to collect delinquent health spa accounts they had purchased from Bally's Health and Tennis Corporation.

According to the FTC, Perimeter's debt collectors harassed consumers, made false and misleading representations, failed to send required validation notices, failed to verify debts when requested to do so by consumers, and made impermissible third party contacts regarding consumers' debts.

North American Capital Corporation (NACC) has agreed to pay a $250,000 civil penalty. According to the FTC, the company's debt collectors made impermissible third party contacts regarding consumers' debts, such as to the consumers' employers and co-workers; harassed consumers by using obscene or profane language; and made false and misleading representations, such as that the consumers' wages would be garnished and their property seized.

Houston, Texas-based United Recovery Systems, Inc. (URS) agreed to pay a $240,000 civil penalty as part of a settlement with the Federal Trade Commission. This is the FTC's first enforcement action against a debt collection company for allegedly violating the rights of Spanish-speaking consumers.

According to the FTC's complaint, on numerous occasions, in connection with the collection of debts in both English and Spanish, the company's debt collectors communicated with consumers at improper times or places, engaged in prohibited communications with third parties, harassed and abused consumers, and used deceptive practices to collect.

Turn the Tables on the Debt Collector

Debt collection companies are businesses just like any other, whether non-profit or not, and they need to collect on their accounts in order to satisfy investors, cover expenses and pay their people. To accomplish this, they need methods to “close sales” through sales agents. We know them as collection agents.

A collection phone call is nothing more than a sales call. The caller is trying to close a sale, convince you to make a payment. The caller wants you to make payment over the phone while giving confidential information which can be used against you later to forcibly collect money without your consent. Did you realize that **cooperating with the caller is totally voluntary and within your control?** Did you know that the callers attempting to collect are following a script and using sophisticated software to monitor and record your responses? You can use this knowledge to gain a substantial advantage over the caller and turn the tables in your favor.

Follow this procedure if you do not change your phone number or if you provide your new phone number to the creditors to make it appear as if you have in fact moved to a new residence. This procedure applies to anyone, even creditors, even though they may claim not to be liable under the Fair Debt Collection Practices Act. They are liable under the Telephone Solicitations Act and under the criminal statutes regarding harassing and threatening telephone communications.

Step 1: Never discuss the account that they are calling about. Your first concern is to get the caller’s full name, mailing address and phone number.

Step 2: Write this down in a log next to your phone along with the time and date.

Step 3: Next, never, never, never give out any information about yourself to the caller, not your address, phone number, banking information, social security number, driver license number, **nothing**.

Step 4: Do not acknowledge the accuracy or inaccuracy of any information they provide.

If they do not have it, they don’t need it and it’s their problem. You may need to confirm that they have the right person in order to complete the next steps, but give them nothing else.

Remember that what you say will be summarized or quoted in their call management software database. Follow these steps and you can use this to your advantage.

Step 5: Inform the caller that the conversation is being recorded, that he has the right to remain silent and that anything he says may be used against him in a court of law. Expect him to end the call at that point, but be prepared to continue to explain that you do not want to receive any more calls from this organization and that any further calls will constitute harassment and a class 1 misdemeanor under state law. Explain that if anyone calls you again from his organization, that you will hold him personally responsible and file a written complaint for telephone harassment against him individually with the state attorney general's office.

Do not discuss anything specific about the account.

Step 6: Tell the caller that you are requesting a validation of the disputed account. Never indicate that you refuse to pay.

Step 7: Next, request a copy of their "do not call policy" as required by the Federal Telephone Solicitations Act.

Step 8: Send the collector the request for validation as explained in the next section; and the notice to stop telephone communications as shown below.

This procedure is absolutely effective at stopping about 99% of all unwanted phone calls, without regard to the matter about which they are calling.

You can even use it with in-laws and neighbors, (Just kidding).

In very few circumstances, you will have a collector who thinks that the law does not apply to him and who will ignore all of these responses. You can pursue the complaint to the attorney general's office, but there is one more strategy you can apply that is more effective.

Bill Collection Secrets

Debt collectors and creditors calling to collect from you are trying to make a sale, just like any other sales call.

Legally, a collection call is considered soliciting. They are selling you on the benefits of paying them what they say you owe, in exchange for them not continuing to harass you, not making any more claims on your credit history and/or not suing you. That is the implication anyway, some will even say it. Consequently, the callers are monitored for their productivity. A call without a "sale" (your verbal commitment to make payments) is not productive and they might call you again. However, a call without a sale that substantially exceeds the average call time for most calls of this nature will result in your account being placed on the "do not call" list or listed as "uncollectible," in which case you will no longer receive any calls.

They have a DO NOT Call List!

This is a little time-consuming, but it works very well. Your objective, if you choose to follow this strategy, is to keep the caller on the phone for as long as possible. The trick is to never discuss the collection account, but make it appear as if you are sincere. Talk about politics, collection laws, the evil banking system and your political opinion about the Federal Reserve Board. Talk as if you are not listening to them, or that you are not smart enough to address their specific questions. For example,

The trick is to sound sincere.

Bill Collector: "Sir, I need to know when you intend on paying this bill."

You: "You people are all the same, you called me last week. You know, this banking system has to go, it's nothing but evil."

It does not really matter what you say, just avoid discussing the collection account, do not give any payment information, do not make any commitments to pay, and sound sincere. If it sounds like the caller is going to end the call, ask for a supervisor. This could double the call time in many cases.

STOPPING PHONE CALLS

[Subscriber]
[Address]
[City state ZIP]

[Collector]
[Address]
[City State ZIP]
[Phone number]

[Date]

Re Harassing and Threatening Phone Calls from Your Company

Greetings:

Please limit your communication with me to writing only. If I receive any telephone calls from your company, I will consider them to constitute harassment. Please be advised that unwanted telephone calls are a class 1 misdemeanor in this state and I will file a complaint against the caller with the attorney generals office. I maintain a telephone log of each phone call and in some cases, make an audio recording when necessary.

Send me a copy of your “written policy” for maintaining a “do not call” list. The Telephone Solicitation Act requires that such policy be made available upon demand. This Federal statute imposes a $500 fine against unwanted telephone solicitation. I do not want you to call me. If you do call me, you agree to pay, on a for-hire basis, my telephone equipment and time in answering your call at a rate of no less than $500 per call.

Be advised that you have the right to remain silent. If you ignore this notice and contact me by telephone, you and your employees agree to allow me to make an audio recording of our conversation and you and your employees agree to allow the recording and any other information to be used against you and your employees in a court of law. I will accept only your written communication.

Be advised that I am not requesting a "verification" that you have my mailing address, I am requesting a "validation;" that is, competent evidence that I have some contractual obligation to pay you.

You should also be aware that sending unsubstantiated demands for payment through the United States Mail System might constitute mail fraud under federal and state law. You may wish to consult with a competent legal advisor before your next communication with me.

Your failure to satisfy this request within the requirements of the Fair Debt Collection Practices Act will be construed as your absolute waiver of any and all claims against me, and your tacit agreement to compensate me for costs and attorney fees.

Best regards,

[Subscriber]

In the event that you continue to receive unwanted telephone calls, and this includes from anyone, a debt collector, creditor, attorney, rude neighbor, you can make a written complaint to your state attorney general's office using this example:

==

LETTER TO THE STATE ATTORNEY GENERAL

[Subscriber]
[Address]
[City state zip]

[Attorney General Office]
[Address]
[City state zip]
[Phone]
[Fax]

Re unwanted, threatening and harassing phone calls

Greetings:

Please help me to resolve this problem. I have tried to address it myself but my requests go unanswered. [Individual calling] from [creditor/collector] continually calls me demanding payment of money I have already paid. They refuse to correct the problem and have been calling me, almost every day, making threats about garnishing my wages or closing my bank accounts. Sometimes they call me numerous times in the same day, even at work. It's like they think they can do anything they want. Is this illegal?

[Individual calling] said he (or she) could garnish my wages any day unless I sent payments immediately. He (or she) asked me to fax and then mail five pre-dated checks or the company would begin garnishing my wages. Can they do this?

Please help me if you can, as soon as possible.

Best regards,

[Sender]

Copy to:

[Creditor/Collector]
[Address]
[City state zip]

==

You should also be able to make this same complaint via the Internet. Just do a keyword search under your state's name, and "attorney general".

The Fair Debt Collection Practices Act is adopted into many state statutes that are substantially the same. You cannot expect to defeat a collection process with this statute alone, not even if you rely on your state's statute while you are defending against a lawsuit in your state. This statute was probably written to quell consumer outrage at abusive collection practices undertaken during the 1970s. It has very little penalty provision or authority. Most creditors will ignore it and most debt collectors have never heard of it, even though it applies to them.

A law with no real teeth.

Your best defense against a third party debt collector is the chance that they did not include any assignment agreement from the creditor, did not include evidence of consideration for that agreement, or for your consent to enter into any so-called obligations with the collector (unless you made payment), and many times, the fact that they are not registered with your state's Secretary of State to do business in your state. It is always good practice to obtain a certificate of non-existence from your Secretary of State for any third party debt collector so that it can be used in court. Failure to register means that the collector is not authorized to file any lawsuits in that state.

Get a Certificate of Non-Existence.

Your Defense

The Fair Debt Collection Practices Act (FDCPA) is the basis of your defense against nearly every unsecured collection instituted by a third party (assignee) debt collector. Here is the statutes exact text with some comments.

THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996)

To amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

TITLE VIII - DEBT COLLECTION PRACTICES [Fair Debt Collection Practices Act]

Sections

801. Short Title

802. Congressional findings and declaration of purpose

803. Definitions

804. Acquisition of location information

805. Communication in connection with debt collection

806. Harassment or abuse

807. False or misleading representations

808. Unfair practice

809. Validation of debts810. Multiple debts

811. Legal actions by debt collectors

812. Furnishing certain deceptive forms

813. Civil liability

814. Administrative enforcement

815. Reports to Congress by the Commission

816. Relation to State laws

817. Exemption for State regulation

818. Effective date

§ 801. Short Title [15 USC 1601 note]

This title may be cited as the "Fair Debt Collection Practices Act."

§ 802. Congressional findings and declarations of purpose [15 USC 1692]

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 803. Definitions [15 USC 1692a]

As used in this title --

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --

(A) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) Any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information [15 USC 1692b]

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) Not state that such consumer owes any debt;

DEBT COLLECTOR CANNOT TELL A THIRD PARTY

(3) Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) Not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

Comments

Let's analyze this previous section, 804. Any collection notice or other form of communication such as a telephone call must comply with each of these requirements.

When a debt collector calls you, his only objective is to get you to commit to make payments or to pay the entire debt as quickly as possible. The collector may ask for your social security number and bank account or even credit card information to secure payment. Sometimes they will ask you to fax or mail them post dated checks. Some debt collectors will even go as far as to tell you that if you don't pay by a certain date, they will come out and tow away your car or take your house. This is patently false, only in cases where the property in question is secured as collateral by an actual written agreement (usually a promissory note), can the collector take the property, and only after they have followed the lengthy and expensive process of a lawsuit and obtaining an actual judgment.

Did they threaten to take your car?

A judgment would only be obtained in about a year if they are diligent about it. In nearly every debt collection case, the collector is not prepared to sue you, that's the purpose of calling you, **"TO TRY AND HARASS AND INTIMIDATE YOU"** with verbal statements and scare you into paying to make them stop calling. Sometimes the collector will tell you that adverse and negative claims will be made on your credit history, but even this doesn't happen many times. If it does, the items can be removed simply because the information published in the debt collector's claim does not represent your account. One or two letters will cure this problem.

It appears that debt collectors and their agents are trained to actually lie and tell you whatever they think will induce a payment.

Without making any such commitment or disclosing any more information than the collector already has about you (do not engage in argument with the caller), it is recommended that you obtain the following information before disconnecting: the caller's identity, such as his full name, and the name of the caller's employer (name of debt collector).

Get the collector's:

- ***Full Name***
- ***Identification Number***
- ***Company Name***
- ***Mailing address and/or email address***

Keep a written record of this information close to the phone (a phone log) and write down the time and date of each call. Try and obtain the caller's phone number, fax number and mailing address as well. This information can be used at a later time if it becomes necessary to file a complaint with the Federal Trade Commission or even a lawsuit for damages (so far, I have never seen a need for this).

KEEP A PHONE LOG!

§ 805. Communication in connection with debt collection [15 USC 1692c]

(a) COMMUNICATION WITH THE CONSUMER GENERALLY. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt --

ONLY PERMISSABLE CALLING TIME IS BETWEEN 8:00a.m. and 9:00p.m. LOCAL TIME

(1) At any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

Debt Collector CANNOT call you at work!

(3) At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES. Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except --

(1) To advise the consumer that the debt collector's further efforts are being terminated;

(2) To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

DEBT COLLECTORS CANNOT HARASS

§ 806. Harassment or abuse [15 USC 1692d]

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.

Debt Collector SWEARS at You? He VIOLATED the law!

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)1 of this Act.

(4) The advertisement for sale of any debt to coerce payment of the debt.

Calling you a dozen times a day? VIOLATING the law!

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

SUMMARY

Unless you give them permission, a collector cannot call you at work or after normal "convenient" hours at home, that is not before 8:00 AM or after 9:00 PM local time. If after being notified that you are represented by an attorney, the debt collector cannot contact you directly. Our program is not designed for use with attorneys who represent you, but in case you already have one, this is the rule. In some cases, collectors know that they cannot intimidate your attorney, so they will try and go around your attorney to try and get a commitment to pay from you over the phone, as discussed earlier.

Instead of requesting that the collector cease further communication, we notify the collector that no further telephone contact will be permitted and that the only line of communication available will be via fax or mail. This helps you avoid unnecessary argument with the caller or disclosing information or making commitments over the phone. Believe it or not, many people are intimidated by what a collector will say over the phone. The requirement to correspond in writing usually eliminates this potential problem.

If any of these prohibitions apply to your particular situation, one or more of the letters published in this series can be modified to address and solve the problem.

§ 807. False or misleading representations [15 USC 1962e]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of --

(A) The character, amount, or legal status of any debt; or
(B) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

Collection letter look too official?

It may be VIOLATING the law.

Who is the collection letter REALLY from?

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to --

(A) Lose any claim or defense to payment of the debt; or

(B) Become subject to any practice prohibited by this title.

"This is your last chance to pay this bill" NO it isn't!

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

Is the letter actually legal process or not?

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 808. Unfair practices [15 USC 1692f]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

Did they ask for a postdated check? They have to notify you in writing.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any non-judicial action to effect dispossession or disablement of property if --

(A) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) There is no present intention to take possession of the property; or

(C) The property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

Summary

Section 807 describes what would constitute a false or misleading representation of the disputed account or collection attempt. It's not such a problem anymore, but in a few collection cases, we will see a collector who uses a letterhead to appear as if it were an attorney or law firm, or even a government agency. Sometimes a debt collector will use a "dba" (doing business as) or an actual corporate name, that sounds like a government agency with words such as "United" or "American" or "Department." Some of the examples include language such as "…from the offices of Peterson and Peterson" yet this name may be the debt collector's dba and not an actual law firm. Some debt collectors will obtain the consent of a local law firm to use their letterhead in written correspondence or to be able to mention that they are calling from an actual lawyer's office if they contact you by telephone. The lawyer may be in another state or city and have no intention of representing the collector in an actual lawsuit against you. This does not happen often, but it is good to be able to recognize these attempts to mislead you into thinking that the debt collector is something other than what it is legally. Obviously, the reason why a collector would take such measures would be to intimidate the consumer.

Some bill collectors rent offices from Law Firms so they can say they are calling from a lawyer's office.

Many consumers greatly fear being contacted by a debt collector and especially fear a debt collector's attorney or government agency.

Some debt collectors will misrepresent the status of the collection account by claiming (by phone or letter) that if you do not pay, they will take your car or garnish your paycheck, when in fact, they have obtained no judgment. All debt collectors (except the government) must obtain a judgment by suing you and giving you the opportunity to answer and defendant yourself. If you lose, the collector would obtain the judgment from the court, then file it on the public record in your county and begin "executing" its right to enforce the collection under the authority of the court and local sheriff's office. In order to take your property when no property is secured by the agreement creating the debt, the collector would need to post a bond with either the clerk of court of the sheriff's office and then apply to the court for a writ of execution and have it served by the sheriff before any property could be taken. The typical collection is a paycheck and not cars or even real estate. It can happen, but it is very rarely done if at all.

TAKE MY HOUSE!

In order for a collector to take your house, it would have to overcome any homestead exemptions and the amount of the collection would have to be high enough to justify the foreclosure. Remember that the most valuable tool a debt collector has is using the fear of the consumer (fear of the unknown) to coerce a payment. One of the purposes of this course is to dispel that fear in your mind so that you can deal with any collection situation in a rational manner. Once you know what they can and cannot do, a debt collector will not be able to intimidate you. Once a debt collector cannot intimidate you; its collection efforts will be costly and worthless. The more money a debt collector spends to try and collect from anyone, the greater the likelihood that, not only will the collection not take place, but the debt collection industry will calculate that this particular business enterprise is not very profitable. This type of awareness is spreading throughout the debt collection industry. There are higher numbers of “contingency” collections, where the collector is simply hired to make one or two attempts to get a payment and must return the account to the creditor when it is not successful.

The more money they spend, the less likely the collection will take place.

As you begin to understand this course, you will realize that it is easier to face the debt collector rather than the creditor. If the creditor uses a debt collector at all, it probably does not have a budget to sue or to defend itself against a counter suit.

While the debt collector may be able to use a dba, it cannot use a fictitious name unless it is registered with the state in which it is doing business and attempting a collection. In other words, the debt collector must be available to be sued or investigated and this cannot happen if collectors were permitted to make up business names without regulation.

In some cases, a debt collector may correspond using a form or other document that appears to be an official or legal document issued by a court. This is one of the recognized and illegal collection practices described under the last part of this section.

Section 808 of the statute describes what would be considered unfair practices employed in the course of attempting to collect a purported debt. It begins by saying that the limitations described in the following section do not limit the object of the statute. That means that even though the debt collector might not have violated the literal language of a particular provision, if it can be shown that the particular collection practice was unfair or unconscionable, then it will be considered a violation of the Act.

It further states that the debt collector cannot collect any amount of money that is not permitted by law or by the agreement. Because there is no agreement between the collector and the alleged debtor, no collection can be sustained. Paragraph 2 states that they cannot keep any post dated check longer than two weeks (approximately). We do not recommend paying the debt collector so this is not an issue. If the collector solicits you for a post dated check; he cannot do so while indicating that if you don’t provide it, you may be indicted for a crime. **You should not be having this type of conversation with a debt collector if you are following the program.** They cannot charge you fees for communicating in any way. They cannot threaten to take your property as if they had a right to repossess personal property without a court order. Post card communication violates the privacy

Did you have a contract with the debt collector?

Do NOT give a debt collector a post-dated check.

restrictions in the Act. The return address or envelope cannot display information indicating in any way that the correspondence is from a debt collector.

§ 809. Validation of debts [15 USC 1692g]

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

(1) The amount of the debt;

(2) The name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(6) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(7) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

Forget to ask for validation?
Not an Oops!

Summary

Subparagraph 4 requires the debt collector to "verify" or respond with evidence that would validate its claim. A reasonable time for response is thirty days. There is no penalty if they fail to respond in thirty days; however, failure to respond within a reasonable time (usually 30 days in these types of cases) would preclude the legitimacy of any claims they might wish to make at a later time via lawsuit. Most judges view a failure to validate as bad faith and an element in the possibility that they really do not have a legitimate claim**. It does help that the debt collection industry has a poor reputation because incompetence, abuse, laziness, and poor record keeping practices.** Of course, this reality had given rise to the enactment of the Fair Debt Collection Practices Act so many years ago.

Failure to validate may be viewed as "bad faith".

You will notice that most collection notices include all of the information as required in this section. The strategy of this course is not concerned with asking the collector for information about the credit account. The validation is to know the debt collector's purported right to maintain any claims against the respondent (you). Notice that under 5(c), if you don't request a validation within thirty days of receiving the first collection notice, it is absolutely not a problem and will not work against you.

What is debt collector's right to maintain a claim?

This section not only puts the burden on the collector to validate its claims, but provides consumers with many other types of defenses against a collection lawsuit initiated by a debt collector. These are presented to the court as "affirmative defenses" and discussed following the remaining portions of this statute.

Multiple Debts

§ 810. Multiple debts [15 USC 1692h]

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors [15 USC 1692i]

(1) Any debt collector who brings any legal action on a debt against any consumer shall --

> (A) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

Any action must take place in proper venue.

> (B) In the case of an action not described in paragraph

>> (a), bring such action only in the judicial district or similar legal entity --

>> (b) In which such consumer signed the contract sued upon; or

>> (c) In which such consumer resides at the commencement of the action.

(2) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

Great example of legal double-talk.

(1)It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

Civil Liability

§ 813. Civil liability [15 USC 1692k]

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of --

(1) Any actual damage sustained by such person as a result of such failure;

(2)(A) In the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(2)(b) In the case of a class action

(i) Such amount for each named plaintiff as could be recovered under subparagraph

(ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

Debt collector harassing you?
He may have to pay your attorney fees!

(b) In determining the amount of liability in any action under subsection

(a), the court shall consider, among other relevant factors --

(1) In any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

Be aware of your time limits.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Enforcement

§ 814. Administrative enforcement [15 USC 1692l]

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under --

(1) Section 8 of the Federal Deposit Insurance Act, in the case of --

(A) National banks, by the Comptroller of the Currency;

(B) Member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) Banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directing or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) Subtitle IV of Title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) The Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission [15 USC 1692m]

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

§ 816. Relation to State laws [15 USC 1692n]

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

The State can provide greater but not lesser protection.

§ 817. Exemption for State regulation [15 USC 1692o]

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

§ 818. Effective date [15 USC 1692 note]

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Summary

There are reasons why debt collectors cannot enforce the collection

The debt collector cannot provide the same services as the creditor did, so the contractual arrangement changes. It would be analogous to assigning a credit card debt to a loan shark and instead of getting sued; the loan shark hunts you down and shoots off your kneecaps. It's not an equitable agreement and there was no "meeting of the minds," a necessary element of any valid contract. This is known as "breach of contract" or the affirmative defense of "statute of frauds" (no contract in writing).

Statute of Frauds

Certain contracts <u>MUST</u> be in writing!

The statute of frauds has its origin from the English common law as early as 1677. It required certain classes of contracts to be in writing so as to avoid perjuries or false testimony when maintaining an action to enforce the terms of an agreement. Generally, the statute of frauds is concerned with agreements exceeding five hundred dollars in value, contracts which guaranty the debt of another, the sale of land, or those agreements that cannot, by their terms, be performed within a year. It has been adopted by many state legislatures in America and has nothing to do with "fraud" per se. It was formerly known as the statute of frauds and perjuries because, by securing an agreement in writing, the courts can better decide on the facts of the dispute and avoids perjured testimony by the parties.

The Statute of Frauds has nothing to do with frauds.

Suppose you made an agreement with another person to purchase his property for a value of one thousand dollars. If you both agreed that a down payment of one-fourth of that was acceptable, then you might also agree to pay the balance over the next several months. That's a fair deal, but if you decided not to fulfill your end of the bargain by making those payments, and the seller never entered into a written agreement with you defining those particular terms, it would be very difficult to enforce through our court system.

You might argue that the seller agreed to accept payment on the balance over the next eighteen months, while the seller would argue that you agreed to pay him the balance within a week. An agreement in writing should prevent this type of dispute. The statute of frauds prevents costly disputes, as in this example. The parties would have simply referred to the written agreement, each knowing completely what the obligations were.

The statute of frauds can be used very effectively as an affirmative defense if a debt collector sues you. Here is an example of the language you could use in an affirmative defense.

Debt Collector suing you? Here are some ideas.

"The purported contract or agreement falls within a class of contracts or agreements required to be in writing. The purported contract or agreement alleged in the complaint was not in writing nor signed by defendant nor by some other person authorized by defendant who was to answer for the debt, default, or miscarriage of another person." In order to make this argument effectively, "statute of frauds" must be properly plead as an affirmative defense in your answer. You must review your state jurisprudence (case law) about this to determine the elements of facts which are required to be plead.

Another reason is that the debtor of a creditor cannot be responsible to third party collectors because our legal system does not provide a remedy for an individual (e.g. collector) who knowingly and voluntarily incurs a liability (takes the assignment of a debt) and then seeks to recover the purported balance from the debtor (former debtor). It would be analogous to arriving on the scene of a house fire, buying the house from the owner and then suing him for damages resulting from the fire.

There are certain principles of law that protect debtors from the collection efforts of third party debt collectors. One of those involves the concept that one cannot put oneself in harm's way and maintain a suit for damages resulting there from. It's such an old principle of law that it's found in Latin as "Scienti et volenti non fit injuria" in which the literal translation is "An injury is not done to one who knows and wills it."

An injury is not done to one who knows it and wills it.

This is what debt collectors must do when they assume the liability for collecting a debt from you on behalf of an assignor.

Furthermore, because there was no exchange of any benefit or detriment between the collector and former debtor, there is no enforceable agreement. A benefit or detriment would include a payment history to the collector, receiving products or services from the collector or some reliance by either party on the other to perform. Because these elements are not present, there is a "failure of consideration" and no valid contract or agreement.

In some cases, the creditor (assignor) makes an insurance claim for an assignment or claims it as a tax deduction. This is known as "accord and satisfaction" because the creditor accepted payment from a third party for the purported debt, or a portion of the purported debt. This renders the debt satisfied and legally uncollectible by the creditor or any subsequent assignees.

Laches (statute of limitations)

"Each cause of action, claim, and item of damages did not accrue within the time prescribed by law for them before this action was brought."

Be aware of the Statue of Limitations.

This is another example of an affirmative defense. Better known as the doctrine of laches or the statute of limitations for civil actions, it's a defense to bar claims in which the claimant waits too long to assert his rights. Today, it's governed by statute and imposes a time limit on most civil actions. It could be anywhere from two years to seven years in duration depending upon the subject matter of the dispute.

Failure of consideration

"There has never been any exchange of any money or item of value between plaintiff and defendant. Defendant has never entered into any contractual or debtor/creditor arrangements with plaintiff."

"Consideration" is a necessary element to prove the existence of a valid, binding and enforceable agreement (or contract). Consideration may be shown in any form, and it must be valuable. It must give rise to a benefit and/or a detriment between two or more individual people or companies. In other words, if it can be shown that either party had even the option to benefit from the other, it might be enough to argue that there was valuable consideration for an alleged agreement. The terms of the agreement would need to be disclosed, and that is another defense to the claim that there was valuable consideration.

If you are making regular payments, you might have a problem!

If there was consideration for an agreement, then there must also be terms that can be scrutinized in writing or by an analysis of an accounting ledger. For example, a ledger showing regular payments could be interpreted as the payee's right to receive those regular payments now and in the future.

Invalid or Failure of Assignment

Once Debt Collector has the account, the original creditor looses his rights.

Although the assignment is permitted by normal business practices, the assignee (debt collector) is not named in the agreement so the debt is not owed to the collector. Because the creditor assigns the account to a third party, he waives his rights to collect, afterwards. There was no "meeting of the minds," a necessary element of a valid contract. This is known as "repudiation."

If there were terms of an assignment from the creditor to the collector, the customer was not a party to those terms, nor was he ever notified of the terms (if any), and most importantly, the customer of the original creditor had already calculated and assumed a certain number of risks (just like in any contract or agreement). When the assignment took place, that number and those types of risks changed and the customer was never given a fair opportunity to agree to the new risks. It was prejudicial to say the least. It is doubtful that any assignment agreement ever has been written including terms nor that any customer has been included as a party to any such assignment agreement. The

The Assignment Clause
...the credit agreement is not enough.

assignment clause in the credit agreement is not sufficient to establish a new obligation with an un-named third party. The assignment clause is merely enough to allow the assignment, and thereby eliminate or abrogate any rights the creditor may have had before the purported assignment. While the assignment may be valid, because there are no terms and because there was no disclosure to the customer and because the customer never consented knowingly and voluntarily to unknown or undisclosed terms, the collection of the debt cannot be enforced or maintained. The simple explanation, the assignment clause is enough to defeat the collection possibilities for both the creditor and debt collector.
The argument may look like this in court:

"The plaintiff is not an assignee for the purported agreement and no evidence appears on the record to support any related assumptions.

Plaintiff's complaint fails to allege a valid assignment and there are no averments as to the nature of the purported assignment or evidence of valuable consideration. Plaintiff's complaint fails to allege whether or not the purported assignment was partial or complete and there is no evidence that the purported assignment was bona fide. Plaintiff's complaint fails to allege that the assignor even has knowledge of this action or that the assignor has conveyed all rights and control to the plaintiff. The record does not disclose this information and it cannot be assumed without creating an unfair prejudice against the defendant."

Failure to State a Cause of Action

It may be said that the complaint fails to state a cause of action or a claim upon which relief can be granted for several reasons.

Six reasons why debt collectors cannot collect debts.

1. The complaint fails to allege or prove that plaintiff is licensed and has procured a bond as required by law.

2. The complaint is not supported by any certified facsimile of a collection agency license.

3. The plaintiff is not a collection agency licensed or authorized to conduct a collection agency business in this state.

4. The plaintiff is not authorized or licensed to collect claims for others in this state, solicit the right to collect or receive payment of a claim of another.

5. Plaintiff is not authorized or licensed to advertise or solicit, either in print, by letter, in person or otherwise, the right to collect or receive payment of a claim for another, nor to seek to make collection or obtain payment of a claim on behalf of another. The complaint fails to allege any exception or exemption to these requirements. The plaintiff is not any of the following: an attorney at law; a person regularly employed on a regular wage or salary in the capacity of credit men or a similar capacity, except as an independent contractor; a bank, including a trust department of a bank, a fiduciary or a financing and lending institution; a common carrier; a title insurer or abstract company while doing an escrow business; a licensed real estate broker; an employee of a licensee; nor a substation payment office employed by or serving as an independent contractor for public utilities.

6. The complaint fails to allege necessary facts such as the terms of the purported agreement, the date that purported account was opened, the form of consideration given and the complaint is unsupported by any evidence, details or other information. Believe it or not, these conditions are usually always true.

Violations of the Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act requires all debt collectors to validate the collection upon request of the purported debtor. Debt collectors cannot possibly validate the claim unless payment to the debt collector has been made by the customer of the assignor (original creditor).

MAIL THAT REQUEST FOR VALIDATION!!!

If you have not yet mailed your request for validation, you can send it in the mail, in a separate envelope, at the same time you file your answer to their complaint (for those that end up in court). Attach a copy of the request (or requests) with a copy of their collection notice or notices to your answer. In any case, a request for validation, or several of them, should be sent by first class mail to the debt collector and a copy of each request should be maintained for your records. Be sure to include a copy of the collection notice with your request for validation.

What is to Fear in a Collection Letter?

Did you get a collection letter? Who sent it and when was it sent?

A collection letter is much like a gauge, it informs of you of approximately where you stand in relation to future collection attempts. For example, the more collection phone calls you receive the more delay you experience before any real collection attempts take place, such as a referral to an attorney. And a collection letter from a creditor, in what you recognize to be a form letter (usually unsigned or signed with a font set) means that no one has taken a serious look at your account, regardless of what the language in the letter says. Also, the date of the letter is very important. How long has it been between the date of your last payment and the date of the letter? The more time between these events there is, the better for you. And another factor is who sent the letter.

Did the letter come from the creditor's in-house collection department, an attorney in another state, a local attorney, or a third party debt collector or a third party debt collector's attorney in another state or the third party debt collector's local attorney?

It is important to understand if a collection notice is coming from a creditor or third party debt collector (and not the creditor). Attorneys are not debt collectors, they represent either, but they are not debt collectors themselves. A third party debt collector is a corporation that never provided you with credit and is not in the banking or credit business. Most of us are familiar with the corporate names commonly known as creditors, such as Citibank, Discover, but companies like "Asset Acceptance Corporation and NCO and First Select" are not creditors.

Arbitration? NOT with Debt Collectors.

In response to a third party debt collector, do not send the same responses as you would for creditors, and do not use the arbitration process. If you do, you may waive your argument that there is no valid assignment, no consideration and be left with defending their collection in court as if they were the original creditor. You do not want this to happen. Always request a validation (much the same as verification) from the debt collector. You can also use the following example to request the same from a creditor, just correct the RE line to indicate the account number.

Chaudhry v. Gallerizzo,

The Fair Debt Collection Practices Act provides that you can request a validation of any collection account that is in dispute. In the case of Chaudhry v. Gallerizzo, 174 F.3d 394, 43 Fed.R.Serv.3d 1063 (4th Cir. 04/05/1999), the court ruled that the collector (or creditor) is only responsible for providing some record that they have your name spelled correctly and that the account number and mailing address is correct. The purpose it serves for us is that it helps us determine what information they do have or how they will respond.

The "Request for Validation" allow you to collect information about the creditor or collector. In response to your request, you may receive many copies of statements and other records that the creditor or collector believes establishes the validity of the account. Even though Chaudhry does not require the collector or creditor to provide all of the documents requested or answer all of the questions presented in the request for validation, it does establish a foundation for your answer, affirmative defenses, counterclaim, discovery and summary judgment. Without this request, some of your pleading or discovery requests may be denied, stricken or overruled due to waiver.

Request for Validation letter follows,

This can be sent anytime, especially when you simply need more information about the account before engaging in further communication with the creditor or collector. The request for validation is very effective at showing you what information the collector, creditor or law firm has about your account.

Don't rely on this strategy exclusively in defending against any lawsuit. It is important to understand that there are many more procedures and strategies to implement in the event you are sued. This request for validation will eliminate most collection notices and phone calls after it is sent the first time to third party debt collectors. It is designed to cause the collector to follow a standard procedure. In most cases, it will cause a debt collector to refer the collection back to the original creditor. The creditor may respond by sending you a series of your most recent billing statements. Their answer will reveal what information they do not have for your account, such as the original signed credit application. This will greatly assist you in defending against any lawsuits.

If you are responding to a third party debt collector, you must only send the "request for validation" and send the follow up request thirty days later. You must study the relevant parts of the course. Be sure to include a copy of the last collection notice with your request for validation since there is no account number between you and a third party debt collector. A lawsuit from a debt collector is very unusual, but it can be handled in one of two ways. First, if the debt collector files suit and does not include any assignment agreement from the original creditor, use the template for debt collectors and the affirmative defense (invalid or failure of assignment). If the complaint does include an assignment agreement, you might respond or answer the complaint as if the debt collector was another assignee creditor. This is better explained in the Advanced Analysis edition.

MILLION DOLLAR LETTER

[Your Name]
[Address]
[City state ZIP]

[Collector]
[Address]
[City State ZIP]
[Phone number]

[Date]

Re inquiry dated ___: account no. (none, there is no account)

Greetings:

Thank you for your recent inquiry. This is not a refusal to pay, but a notice that your claim is disputed. This is a request for validation made pursuant to the Fair Debt Collection Practices Act. I dispute your debt collection-related allegations, deny the same, and demand strict proof and verification thereof. This dispute, denial, and demand are made in accordance with federal law. Please complete and return the attached disclosure request form.

Please limit your communication with me to writing only. If I receive any telephone calls from your company, I will consider them to constitute harassment. Please be advised that unwanted telephone calls are a class 1 misdemeanor in this state and I will file a complaint against the caller with the attorney general's office. I maintain a telephone log of each phone call and in some cases, make an audio recording when necessary.

Be advised that you have the right to remain silent. If you ignore this notice and contact me by telephone, you and your employees agree to allow me to make an audio recording of our conversation and you and your employees agree to allow the recording and any other information obtained to be used against you and your employees in a court of law. I will accept only your written communication.

Be advised that I am not requesting a "verification" that you have my mailing address, I am requesting a "validation;" that is, competent evidence that I have some contractual obligation to pay you.

You should also be aware that sending unsubstantiated demands for payment through the United States Mail System might constitute mail fraud under federal and state law. You may wish to consult with a competent legal advisor before your next communication with me.

Your failure to satisfy this request within the requirements of the Fair Debt Collection Practices Act will be construed as your absolute waiver of any and all claims against me, and your tacit agreement to compensate me for costs and attorney fees.

Best regards,

[Your Name]

CREDITOR DISCLOSURE STATEMENT

Name and Address of Collector (assignee):

____

Name and Address of Debtor:

____

Account Number(s):

____

What are the terms of assignment for this account? You may attach a facsimile of any records relating to such terms.

____

____

Have any insurance claims been made by any creditor or assignee regarding this account?

Yes / no

____

Has the purported balanced of this account been used in any tax deduction claim?

Yes / no

____

Please list the particular products or services sold by the collector to the debtor and the dollar amount of each:

____

____

Upon failure or refusal of collector to validate this collection action, collector agrees to waive all claims against the debtor named herein and pay debtor for all costs and attorney fees involved in defending this collection action.

X________________________________ __________________

Authorized signature for Collector Date

Please return this completed form and attach all assignment or other transfer agreements that would establish your right to collect this debt. Your claim cannot be considered if any portion of this form is not completed and returned with the required documents. This is a request for validation made pursuant to the Fair Debt Collection Practices Act. If you do not respond as required by this law, your claim will not be considered and you may be liable for damages for continued collection efforts.

MILLION DOLLAR LETTER BONUS

This section will give you an example of what to expect in response to your request for validation, and how to respond if necessary. You will find the follow up example to the request for validation and a final notice you can send to the collector that fails to answer your request.

The form can be modified if you want to send this second notice thirty days following your first request for validation because they did not respond. You only need to change the first line to "I did not receive any response to my request for validation dated ___, a copy of which is attached."

If the collector fails to produce the records or information listed in this second request, and then send the request. To save you some time, they never produce these records. The collector or creditor will claim that those records are not required in order to comply with the Fair Debt Collection Practices Act, or that because they are the creditor, the Act does not apply to them, or because it's a business account, the Act does not apply.

Rarely, if ever do debt collector produce the records requested.

Although correct, these records and information are required in court to prove their case, so by sending this letter now, you are establishing a foundation for your defense, and for requiring them to produce the information in court, in the event you are sued.

[Your Name]
[Address]
[City state ZIP]

[Collector]
[Address]
[City State ZIP]
[Phone number]

[Date]

Send this letter if the collector did respond.
If they did not, change the first line to read:
I did not receive any response to my request for validation dated ___, a copy of which is attached.
And change, Your response to Your lack of response
Send it 30 days later.

Re inquiry dated ___: account no. (none, there is no account)

Greetings:

Thank you for your recent response to my request for validation. This is not a refusal to pay, but a notice that your claim is disputed. Your response did not include sufficient information to establish your claim or meet the requirements of the Fair Debt Collection Practices Act. Again, I dispute your debt collection-related allegations, deny the same, and demand strict proof and verification thereof. This dispute, denial, and demand are made in accordance with federal law.

I need documents or information that shows how I might be obligated to pay you. Do we have an agreement, maybe a contract in writing? I have never heard of your company before. What is the nature of your business? Are you a depository or lending institution? Did you provide me any services or products? If you did, please list them and be specific. What did I buy from you? Did either of us rely upon the other to perform? When did you solicit my business or do you have any records showing that I solicited your business? If I owe you money as you claim, then what is your obligation to me?

If you claim to be the assignee debt collector for a particular creditor, do you maintain a valid license and bond to engage in this particular collection activity in this state? What are the terms of the assignment? What are your rights and liabilities and what are the assignor's rights and liabilities under the purported assignment agreement? When did I consent to the assignment and do you have evidence of that consent? What provisions of the purported assignment agreement describe my rights and liabilities under its terms? In what manner did I benefit from the purported assignment? Is the purported assignment within a class of contracts, the performance of which might exceed one year? Please include a facsimile of this agreement and any other supporting records in your reply. Please answer these as soon as you can and be specific.

If you don't provide me the information requested within thirty (30) days I will consider the purported debt to be invalid, that you made a mistake, and that you agree to sanctions imposed against you and your organization for knowingly continuing a frivolous claim against me.

Please limit your communication with me to writing only. If I receive any telephone calls from your company, I will consider them to constitute harassment. Please be advised that unwanted telephone calls are a class 1 misdemeanor in this state and I will file a complaint against the caller with the attorney general's office. I maintain a telephone log of each phone call and in some cases, make an audio recording when necessary.

Be advised that you have the right to remain silent. If you ignore this notice and contact me by telephone, you and your employees agree to allow me to make an audio recording of our conversation and you and your employees agree to allow the recording and any other information to be used against you and your employees in a court of law. I will accept only your written communication.

Be advised that I am not requesting a "verification" that you have my mailing address, I am requesting a "validation;" that is, competent evidence that I have some contractual obligation to pay you.

You should also be aware that sending unsubstantiated demands for payment through the United States Mail System might constitute mail fraud under federal and state law. You may wish to consult with a competent legal advisor before your next communication with me.

Your failure to satisfy this request within the requirements of the Fair Debt Collection Practices Act will be construed as your absolute waiver of any and all claims against me, and your tacit agreement to compensate me for costs and attorney fees.

Best regards,

[Your Name]

If you want to finish the series of communication in the event that the collector fails to satisfy your request, you may use the following example as your final notice.

[Your Name]
[Address]
[City state ZIP]

[Collector]
[Address]
[City State ZIP]
[Phone number]

[Date]

Re inquiries dated ___ and _____ (see attached copies)

Greetings:

I have made two separate requests for validation (see attached) and your response or lack of response fails to comply with the disclosure requirements of the Fair Debt Collection Practices Act. Enough time has passed to allow you to comply but you have failed to meet the legal requirements of the law. It is apparent that you have no claim and that you have no records or evidence to support any claims against me. You have not provided me with any evidence to establish that I owe you any money.

Your failure to respond in a timely manner is therefore deemed as an admission that you are not able to support your claim of debt against me. Please be advised that should you initiate a lawsuit against me without having proof that I owe you anything at all, I now have evidence that you are advancing a frivolous lawsuit.
Starting a frivolous lawsuit may subject you to sanctions by the court, including costs, fees, and penalties. I urge you to carefully consider your course of action from here on out.

Best regards,

[Your Name]

No more communication is necessary. These two letters are enough to accomplish your objective of determining what information the collector or creditor has about you. This will better prepare you for any possibility of a lawsuit and restoring your credit history.

The following instruction supplements this procedure to give you a better understanding of why it is effective. These strategies can be relied upon when a creditor assigns, sells or transfers a debt to a third party collector without the consent of the debtor. The object in corresponding with collectors is to enforce the protections under the Fair Debt Collection Practices Act by first requesting a validation of the purported debt. Lawyers and law firms are not organized as debt collection companies, but may sometimes represent third party debt collectors. Sometimes it is confusing because of the notice they include at the bottom of their collection letter "This is an attempt to collect a debt, and any information…" This does not mean that the lawyer or law firm is the actual debt collector, only that they want to avoid the liability under the Fair Debt Collection Practices Act which made attorneys liable in 1996. If you are not certain who they are or who they are representing then ask over the phone or send them a request for validation.

Even though a debtor might have owed the original creditor (it doesn't matter whether he did or not), the third party debt collector is unable to validate the account simply because of the way they operate. In other words, the debt collector is never part of the original credit agreement. They get involved only after the debt is "charged off" to collections. The term "charged off" means that the creditor reported the unpaid account as a loss and claimed a tax deduction and if it was insured, filed a claim to recover it. The charge and subsequent assignment, when done in this manner renders the debt collector's claim invalid, not only because you cannot be compelled to pay a third party assignee without your prior consent, but because they simply cannot prove you owe even the creditor or that there was a valid assignment agreement. Most of these companies do not maintain the records needed to validate such claims because many people do not question them this way. This might change as more people learn how the system works and use it against the collectors.

We ask for more than we expect or is required.

Remember that the debt collector is not required to actually provide you with evidence or proof that you owe what they say you owe. New case law regarding the Fair Debt Collection Practice Act standards requires only that the debt collector confirm the correct spelling of your name and the dollar amount they say you owe. The form letter in this course includes requests for more information, knowing that it is not required at this stage, but it does establish a foundation for them to be required to provide this evidence if they sue you. Most debt collectors do not sue anyone; their primary skill is in obtaining a payment commitment over the phone.

Debt Collectors don't sue…they trick you over the phone!

Examples of proof of the debt would include some evidence that you derived a benefit from the alleged debt. It might also include a payment history and remember that a contract does not require a signature to be binding. The claimant (e.g. the debt collector) merely needs to establish that the debtor derived some benefit from the collector. They do need evidence of your signature connected with the terms of any contract they want to enforce, specific to a certain provision. But they can sue you for what is called "account stated" which avoids the problem of proving the existence of a written contract.

You can be sued for "Account Stated"

Beware Of Unsolicited Credit Cards!

The facts of any collection today would never satisfy these requirements, unless the "debtor" paid money to the debt collector or was given the ability to use a line of credit with the debt collector and failed to refuse it. Some debt collectors will actually send you a credit card or a check stating that if you failed to refuse the offer, you will benefit from the new contract. There is a clear distinction between a creditor and a debt collector. A debt collector is not, in any way, a creditor and every aspect of the debt collector's business is regulated under the Fair Debt Collection Practices Act.

To help prepare for what to expect when you follow this process, you must first learn to recognize the differences between a debt collector and a creditor (or the assignee creditor). In cases where a creditor has assigned your account to another creditor who is in the business of providing credit services and may be a member of Visa™ or MasterCard™, you should consider the collection as if it were undertaken by the original creditor.

In the case where a creditor assigns your account to a third party debt collector, a business that does not provide credit services and is not a member of Visa™ or MasterCard™ or any of the other credit card technology associations, you would respond with a request for validation and your defenses would be those explained in this chapter.

Typically, you may receive a notice from the creditor that your account has been charged off to collections, and a subsequent notice from a company that you have never heard of, requesting payment. The collector is usually not represented by an attorney, but if it is, the response is the same, send a request for validation. Just like actual debt collectors, attorneys are required to include the debt collector notice, "This is an attempt to collect a debt and any information obtained will be used for that purpose." But that does not mean that the attorney or law firm is the debt collector itself. The lawyer would be representing the debt collector in nearly every situation.

Lawyers know that it is not a good business practice (too much liability) to work as debt collectors themselves, or engage their entire law firm in that type of business. Although recent research indicates that collection law firms may secretly own the credit or collection accounts for which the suit is brought. They will want to conceal this fact, if it is true, because of the liability of being sued under the Fair Debt Collection Practices Act and because of the different licensing requirements in each state. First, they must be authorized to practice law in each different state, by each state bar, then as a debt collector, they must maintain a separate licensing for each state in which they want to do business (engage in collections). There is far less liability for the lawyer to either enter into a partnership arrangement with an established debt collector, or to create his own debt collection corporation.

Most lawyers either shy away from debt collection or that is their only business."

ALWAYS request a validation as soon as you receive the first collection notice."

You can expect a variation of many circumstances once an account goes into collections (is charged off). It is important to distinguish between the original creditor and the assignee (debt collector). Always request a validation from the assignee debt collector as soon as you receive the first collection notice in the mail or in writing. If the collector calls before sending the first notice, obtain the information about the caller's identity and collector for whom he or she is calling. Explain that you will not discuss the collection over the phone but they may correspond with you in writing. **It is important to maintain an open line of written communication in the beginning of a collection with the assignee debt collector. End the call after you have explained this and collected the information, and do not discuss any aspects of the collection.**

1. The collector may send you all the information it has from the account you had with the creditor. This does not establish any contractual obligation with the collector but only supports the fact that you do not owe the collector. This type of response is known as a "non-response" or a "failure or refusal to validate" and does not satisfy the legal requirements of the Fair Debt Collection Practices Act.

2. The collector may reassign the account back to the creditor. In this case, the creditor can no longer enforce the collection because it has previously "repudiated" the account. It has no more standing than any other third party collector at this point.

If account is returned to the original creditor, they can no longer enforce the collection.

3. The collection may be assigned to another debt collector. Follow the same process as if it were a new collection (because it is).

4. If or when you begin receiving phone calls, make a record of the caller's name, company, phone number, address, date and time of call. Send a written communication to the caller requesting that future communication be limited to writing only. If they refuse to honor that request, then send a written complaint to the attorney general's office for your state, alleging that the caller is making unwanted, harassing and/or threatening phone calls to you. Include a copy of your telephone log. Send a copy of the complaint to the caller or his

company. That should end the problem very quickly. Follow the procedures already explained in this text for stopping unwanted telephone calls.

5. The collector may tell you that if you do not pay by a certain date, they will report the unpaid balance to the Internal Revenue Service on a Form 1099 as imputed income. This type of income is the result of benefiting from not paying a debt and is taxable; provided that money was actually lent to you and that you had made payment arrangements and failed to maintain them as agreed. Imputed income does not result when you simply never pay the debt collector, and the way creditors operate today, no money is ever lent to the customer. And as for debt collectors, they do not even claim to be in the business of lending money, and without any evidence of a contractual obligation between you and the debt collector, their claim would be false. Furthermore, you cannot be liable for imputed income if you are insolvent. A simple way to determine this, or respond or prepare for an audit is to have a qualified accountant prepared a Form 656 Offer in Compromise, include schedules 433A and 433B. The forms are available at the website for the Internal Revenue Service. Prepare these only for your personal and private assessment. If you are insolvent for the period related to the Form 1099, the IRS cannot hold you liable for imputed income, not to mention if you never entered into a settlement agreement or borrowed money in the first place. This protection is provided by a recent letter ruling issued by the Internal Revenue Service regarding imputed income and insolvency. This text gives you an example of the type of response you should send.

You are not liable for "Imputed Income" if you are insolvent.

The important aspects of defending yourself against debt collectors include the Fair Debt Collection Practices Act, simple contract law and the basis that a debt collector (assignee) cannot establish any contractual nexus to enforce a claim. This doesn't mean that the creditor does not have the right to assign the account to collections, the assignment clause permits this; however, the terms of the assignment fail to include the account holder (you), and this renders the actual collection unenforceable.

Most importantly, if there is no written assignment agreement between the creditor and third party debt collector, in which the creditor (assignor) waives all claims against you, then there is no valid assignment. Further, absence of valuable consideration, an exchange between you and the debt collector of a benefit of detriment, then there is no valid assignment due to failure of consideration.

A contract is an agreement between two or more people or entities in which obligations are created by what is known as "consideration." In law, the term consideration means the exchange of a benefit or detriment. The essential factors in determining whether or not a valid contract exists are first, there must be an offer, there must then be an acceptance and there must then be an agreement to perform under the terms and conditions of the contract.

Consideration: the exchange of a benefit or detriment.

And while these are the basic elements of a contract, it is of no value unless it can be enforced in a court of law. To establish the validity of a contract, consideration must first be given.

Remember that no process actually prohibits a collector or creditor from suing you. Even the United States president can be sued while in office. Anyone can file a lawsuit; however, if you follow the principles in this book, the collector or creditor will not be able to enforce its claim or obtain a judgment against you provided the circumstances are similar to what is described here. This letter writing process is based upon little known but basic principles of contract law. If people had a basic understanding of them the credit and collection industry would probably not exist today.

Elements of a contract or agreement

What constitutes a contract?

If I agree to purchase a service from someone, that agreement is not valid until I pay something for it or enter into a written "promise to pay." It is "consideration" that creates an obligation and it can be in the form of just giving something in exchange for the performance or benefits of the contract. If I handed you a book that you wanted and you agreed to do something for me because of that book, then we have a valid contract. This type of verbal contract is sometimes difficult to enforce because when tested in court, the parties may not be able to resolve genuine disputes as to the true agreement. The court might then make a judgment based on what would appear to be equitable. Consideration for a valid agreement involves an exchange of a benefit or detriment between two or more people or entities.

Contractual elements must include "agreement".

A valid contract exists when there has been an offer, acceptance, agreement, and when consideration has been made. And these contracts are easier to enforce when they are written; however, there are at least two more important factors involved in making a valid contract. Each party to the contract must be competent, or have the standing to contract, and the terms of the contract must be equitable for everyone entering into it. A contract is a matter of equity.

In other words, a contract with someone who is insane or not of sound mind (non-compos mentis) is not valid or enforceable in any court because it cannot be equitable. A contract with a child is not valid except to the extent that it may be enforced upon the party who is not the child. A contract with a corporation is not valid unless it is directly with its board of directors or an authorized agent or officer as defined in the corporation's articles and by-laws. A contract with any government is not valid unless it is authorized by one holding an office as prescribed by law and the office holder must have the proper delegation of authority as required by statute. When a contract is not equitable it can be said to be unconscionable, and therefore, unenforceable.

If one agrees to pay for a service and enters into a contract to that effect, then it may be enforceable. However, if the written terms of the contract create only obligations for that person, but not for the service provider, it can be said to be unconscionable. It could not then be enforceable in any court for two reasons, the first because it was not fair or equitable, and the second because such an action to enforce it would be barred by the statute of frauds (no contract in writing).

On its face, such a contract could be found to be unconscionable when the service provider attempts to sue for breach of contract. Or, if someone brought suit for the service provider's failure to perform, there's a good chance that because the contract was more or less one sided, they wouldn't be able to show the court that the service provider had any particular obligation as agreed to under the written contract. Contracts cannot be extended beyond the language of the written agreement. And agreements made in a written contract must be performed within a certain period of time. Even statutes and company charters have expiration dates.

The Request for Validation can benefit you in restoring your credit history.

How To Handle Original Creditors

Terminate all automatic debits!!!

Only first class mail is necessary for this segment of the process. Be sure to complete all of the missing information on each form and make necessary changes as your circumstances require. Mail each to the address you have on file for the creditor, or the correspondence or dispute resolution address if available. Before you begin, be sure that all automatic debits are terminated for the related credit account.

The form letter examples can be modified as needed. You will need to respond to each collection notice, settlement offer or arbitration notice or petition with the appropriate response. There are several variations of responses.

1. PAYMENT DEMAND

   In response to a letter from a creditor demanding payment, send the objection to collection notice and request for validation (or a consolidated version of these). If the collection notice is from the creditor's attorney, include the response to creditor attorney. Always include copies of the collection notice for reference (minus any exhibits that were included with it).

2. SETTLEMENT OFFER

   In response to a settlement offer, you will want to answer with an objection to the offer and make settlement contingent upon them providing evidence of damages and an agreement of terms such as default and a promise to pay. Send also the request for validation and if the offer is from an attorney, send the response to creditor attorney, or you can send a consolidated version of all of these. Remember to always include a copy of their letter for reference.

3. THREAT OF FORM 1099

   If you receive a notice indicating that the creditor may report or has already reported what it claims to be the unpaid balance to the Internal Revenue Service as imputed income (on Form 1099), reply using the 1099 response and include a copy of their letter for reference. Keep a copy of this response in case you must use it at an audit or an explanation is requested by your CPA.

4. THREAT OF ARBITRATION

   If you receive a letter from a creditor or its attorney, usually MBNA, stating that it intends to file an arbitration petition against you via NAF, AAA or JAMS, **send the arbitration rejection letter**. Remember, this is different than if they file an actual petition against you with the NAF or other arbitration forum.

5. ARBITRATION OBJECTION

   If the correspondence you receive is from a creditor filing a petition to arbitrate against you through the National Arbitration Forum

A "stayed arbitration proceeding" is like a "dismissed with prejudice".

(NAF), AAA or JAMS, such as MBNA, it is very important that you only file a written objection stating that there is no valid agreement to arbitrate and that the arbitration process is corrupted, subject to undue influence and fraudulent. Be sure to date and sign your objection and include the following language as a certificate of service/mailing "The undersigned hereby certifies that a true a correct copy of the foregoing was mailed this day via first class mail to the arbitration forum, its arbitrator and to the petitioner." Be sure to sign and date the certificate.

Do not participate in document hearings or send any other responses regarding the arbitration process. If their claim is stayed by the arbitrator, you can expect it should never be continued at another time. The trouble with this is you never have closure enough to restore your credit history unless the credit reporting bureau understands that a stayed arbitration proceeding is final and renders the account uncollectible, even if the disputed amount is never resolved. A stayed arbitration proceeding is very much like a dismissal with prejudice of a credit card lawsuit. Again, this is another abusive aspect of the commercial arbitration process that banks seek to use against their customers.

Procedure if petitioner obtains an award against you.

If the petitioner obtains an award against you, they will send you notification and demand for payment. In response, send only a copy of the objection with the three exhibits you originally filed in response to the petition. The most certain way to defeat this or a stayed proceeding is to sue the creditor and ask that the court issue an order vacating or setting aside the award. If it's an order staying the proceeding, you want a court to order the proceeding null and void.

If the creditor seeks confirmation of the award by suing in court, and you have not filed a motion to vacate or have it set aside:

- You can answer the complaint and request summary judgment for no valid agreement to arbitrate and for the reason that the proceeding was corrupted.
- If your motion is denied, you simply move into discovery the very next day and demand proof of the alleged agreement to arbitrate and that there was no corruption in the undertaking. The following pages include more discussion and example forms. These are probably not sufficient as is. You will need legal advice and further consultation from a competent attorney. As simple as it sounds to show the court what is wrong, the trial courts are not always inclined to agree with you because the judges realize that some law firms base their entire practice on these petitions and it would just ruin shop talk on the golf course.

Change of Address

This step involves a little time and preparation. The earlier you complete this, the better your chances will be of avoiding a lawsuit. The standard method of determining which law firm or attorney will be chosen to file suit against you is based upon your mailing address. It is assumed by the collections department and the law firm that your mailing address is your place of residence. Since the bank must file suit in the county in which you reside, it must then locate a law firm that is local to this mailing address.

If the collection department sees that you reside in Phoenix for example, it will assign the collection to a law firm located in Phoenix. Remember that you originally confirmed that they had the correct address for you when your account was opened. This is information that you provide, and when you move to a different address, you can easily complete a change of address form and include that with your monthly payment. What if you submitted a change of address form with an address several states away from where you truly reside and arranged to have your mail forwarded to you every two weeks? Would any creditor know the difference?

Pay bills online.

Provided that you would ultimately receive all mail, or that you pay your bills online so that this would not be a factor, probably no one would notice. In fact, if your account did go to collections, upon deciding to file suit, that department would attempt to locate a local law firm near your mailing address which is several states away from where you truly reside. What do you think your chances of being sued would be at that point? There is a chance that the bank would have archived a history of previous mailing addresses, and be able to try the next most recent address, or may retrieve a copy of you credit file and see if they can find your previous address that way. This can be countered by simply disputing your true residential address on your credit file and claiming it is incorrect. You can show copies of monthly statements to prove this. You can also make the change of address twice so that assuming the creditor retains only one previous address for you, it will be replaced when the second change of address is entered into your customer record.

Credit report shows "old" address? File a dispute!

Change x2 = Twice as good!

What if you sent the bank a change of address notice with an address in an area of the United States that had a population less than 4,000 people in one county? Your chances of being sued by a local law firm would be dramatically reduced.

You are probably thinking that "ducking and hiding" is the solution to your debt problems. This is absolutely not true, the method explained here has been used by many wise and learned estate planning attorneys. It is the same strategy used by famous people who want to avoid the press and public scrutiny.

Your mailbox address should of course be in a different state. You can complete the change of address notification for each credit card account to which you wish to apply these strategies. The mail they send you can then be automatically forwarded to your local address for response.

Some of you will ask "What happens if I do this and they sue me anyway?" You cannot be sued until service process is perfected, and in nearly every jurisdiction (county and state), that requires personal service by a licensed process server. Rarely are creditor lawsuits of this type permitted to be served via certified mail or even first class mail. Assuming the worst case, that process can be made by mail, and that the plaintiff's attorney has obtained permission from the court to do that, you will always file in every example, a motion to dismiss for improper service of process.

Were you properly served?

The argument you make is the only one you must make and not submit with any other arguments, that the complaint must be dismissed because service of process was not perfected.

You will explain that you are not a resident of that state and you can include an affidavit so stating, but do not disclose your current residential address for obvious reasons. You can use your mailing address as the return address and you can either arrange to have it mailed from the mailbox service (re-mailed by placing the motion and copies sealed in envelopes with the correct postage and then inserting those in a larger envelope with instructions to the mailbox service) or just mail it from your local address. Be sure to arrange this with your mailbox service to be sure they are willing to do it. They might charge a small fee also.

Do not schedule a hearing on this motion. In some cases the plaintiff will proceed to request default judgment or summary judgment, and again, respond by filing a second copy of the motion to dismiss for improper service of process.

If the court awards judgment anyway, you can then file a motion to vacate that judgment and argue that the court never obtained jurisdiction over you since you were never properly served with the summons and complaint. The details are provided by your attorney.

What happens if the creditor calls me to determine if I am still answering the telephone at the same phone number that matches the address they had on file for me?

There are several ways of preparing for this, but the most important fact to accept is that you will need to change your telephone number. Changing your phone is not to avoid harassing phone calls, but to make it appear conclusively that you have moved to the new address as indicated on your change of address form.

Vonage, Earthlink, many other offer VOIP.

The new voice over Internet (VOIP – Voice Over Internet Protocol) technology services will allow you to utilize the Internet to make phone calls and also allow you to choose a telephone number prefix and area code from nearly any location in the country. In other words, you can change your home telephone number for free by telling the phone company that you have been receiving some threatening calls lately and many times they will change the number for no charge. The number will show an area code and prefix for your service area, very similar to your previous number. That will work perfectly; however, if you want to take this to the next level and make it appear as if your area code and prefix match the location for the address you have chosen, you can use any of the VOIP technologies. To find one, just do a keyword search on the Internet. This is recommended over a traditional phone number change just because it is a number you can use no matter where you live or how many more times you move or change your address, and the Internet connection services are generally less expensive than the regular phone service.

There are also voice mail services which can provide you with the area code you want and allow you to record a message for all debt collectors directing them to limit their communication with you to writing.

To obtain the greatest benefits from this strategy, you will want to establish dual residency. You are already a residence in the state where you currently reside and own a home, have any type of license, mortgage, lease, vehicle, vessel or aircraft registration, state issued identification, children registered in public schools, utility bill, tax bill, enrolled in a public school and/or registered to vote. Any one or more of these establish residency, including membership in a state sponsored organization. It is perfectly legal to establish dual residency and many people do this as a matter of course for college tuition purposes, privacy and other legal objectives.

Dual residency is easier than you think.

You can obtain a major benefit by establishing residency in another state and greatly reducing the risk of being sued (service of process); however, you can further reduce the possibility of wage garnishment by changing your residency to a state where wage garnishment is not legal. Did you know that there are four states in which the law prohibits wage garnishment? They are Pennsylvania, North Carolina, South Carolina and Texas.

Four Magic States!

Why Do People Fear A Lawsuit?

Isn't a lawsuit nothing more than paper? Aside from the details about going to court and talking with a judge and attorneys wearing expensive business suits and practically speaking a foreign language, a lawsuit is nothing more than a piece of paper. If can result in the taking of your property and that is the reason why many people hire attorneys in their defense or defend themselves.

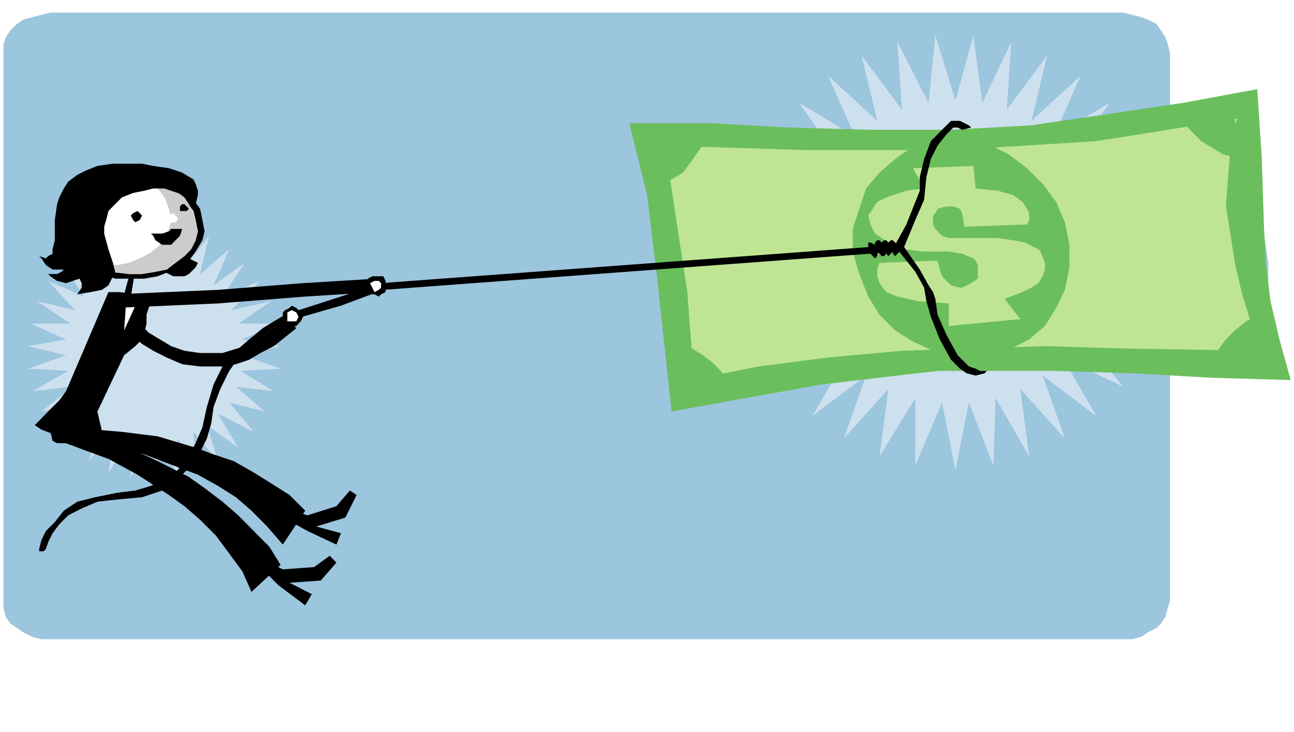
Actually, it is the fear of the lawsuit that induces many people to make payment arrangements with creditors. Once you understand what is at risk and involved in the lawsuit process, you will realize that making payment arrangements provides a substantially greater risk in terms of loss to you than simply not making any payments voluntarily. Believe it or not, there are many laws on the side of consumers suffering from debt collection problems and by making payment arrangements you are giving up these protections and restrictions against the collection efforts.

Creditor power lives in the Fear of a Lawsuit.

Defending yourself and your property and the unknown elements involved in this is what scares people. Responding to collection actions is also frightening. For many people, they are willing to endure the fear either because they feel wronged and/or because they have a lot to lose.

Feeling wronged is not expensive, the chance of losing your money and property can be very expensive and for a long period of time. The message to convey is that not volunteering to pay is by far less expensive than making payment arrangements, whether through settlement, negotiation or consolidation.

MONEY FOR NOTHING
AT YOUR EXPEN$E



Many people today have contempt for the current credit and consumer lending system.

Many people today have contempt for the current credit and consumer lending system. There are people in the legal profession, such as attorneys, especially collection attorneys, judges and collection firms that claim the information you are reading is published to incite anger and sell information by manipulating you.

Each of you are intelligent enough to decide for yourself the reasons for any action, inaction, or decisions you make without being influenced only by information.

There is a big problem in our nation today with the current credit and consumer lending system. The actions we undertake today will affect the next seven generations of our children

Creditors "lend money" today and have been since the consumer credit market developed from 1950. Research shows the first use of credit cards began with Diner's Club. The interesting term to understand is "originate". This word has become the credit industry language for what we could call "counterfeit".

Asset-Backed Securities

This identifies an entire multi-billion dollar industry in which creditors, investors and other organizations buy and sell interests in their expectation of consumers to continue making their monthly payments. One vehicle is known as "asset-backed securities". If you are familiar with annuities, and have done a little research into where these agreements are funded, you might already know that thirty percent of the annuity market is based on mortgage backed securities. In other words, about a third of the returns you get from annuities come from people making their mortgage payments.

Creditors make money through many unfair clauses.

You will also learn how creditors make money from their customers through fees and penalties, and unfair clauses in their agreements.

Your credit rating has helped you acquire debt, in many cases, an overwhelming amount of debt. Consumer credit ratings were designed and operate today as a very effective tool in manipulating people to continue making their monthly payments, even when it does not serve their interests

Did You Know That Banks Lend Nothing?

The second most incredible aspect of the banking system is that **banks do not risk their own money or assets by lending them to borrowers.** The current definition of money is "a claim" or in common language, something which can be traded for other products or services. There are two types of money throughout the world, debt/credit money and barter. In a barter transaction, items of similar value are exchanged. This is older than written history. Debt and credit money is what most now refer to as "a claim". In other words, a transaction takes place because someone is a borrower and someone is a lender. In the example of buying something with a Federal Reserve Note, the note is the instrument of debt, and the medium of exchange. The note itself was borrowed into existence.

In the example of the United States, the Congress creates bonds which are nothing more than promises to pay based on their ability to write laws to collect taxes. The Federal Reserve Bank accepts these bonds (debts) in exchange for Federal Reserve Notes (other types of debts which the public accepts at face value).

Money and Banking 101

In order to repay these notes, the Congress must continue to borrow from the lender (Federal Reserve) in a never ending cycle of inflation. In fact, in order to perpetuate this system of borrowing and lending, the borrower (Congress) must continue to incur greater and greater debt from the lender (Federal Reserve). It's a little more complex than this, but the principle is the same.

Commercial banks are given permission to use the same mechanism in the "lending" process. Instead of having their own assets or money to put at risk, they create, or originate new money based on a set of rules, much like the Congress and Federal Reserve. That is the second most incredible aspect of the banking system.

The most incredible aspect is that nearly everyone who is adversely affected by the scheme is deceived, not aware and/or cannot comprehend it. They cannot comprehend that they are victims of the most gigantic and sinister counterfeiting scheme in human history.

Time heals all wounds and devalues all money.

Imagine storing your cash in a box in your house, and guarding it all day and all night. If anyone tries to break into your house and take the cash, you could confront them, stop them and defend your property. With inflation, each day your cash is worth less and less. It is stolen from you through inflation and there is nothing you can do to defend against it and nothing you can do to hold someone accountable for it in our current system.

Chapter 3 of both the text and training manual of Money & Banking, published by the American Bankers Association, explains in great detail how banks create money and gives examples of the types of limits imposed on the process. To summarize, a bank which has $100 in deposits can create $500 in new currency. To quote the text:

"Multiple Deposit Creation

Multiple deposit creation describes the ability of the banking system to create an amount of deposits many times greater than the bank's initial amount of reserves. Again, we can illustrate this concept by using T-accounts to trace a commercial bank loan. This time, however, the effect of the loan on other banks will be followed as newly created deposits move from bank to bank. To keep the example simple, we will assume that all bank-created deposits stay in the banking system, that all newly created funds are held as demand deposits, and that each bank creates loans equal to every available (excess) reserve dollar. Although these assumptions are unrealistic, they do not distort the fundamental process by which banks collectively create multiple deposits.

Assume that Bank One receives a cash deposit of $100,000 from a corporate customer for credit to the customer's checking account. Also assume that the Federal Reserve's reserve requirement for such transaction accounts is 10 percent. Bank One must hold $10,000 in required reserves against its new $100,000 deposit, which leaves $90,000 in excess reserves. Bank One can thus create $90,000 in additional funds through lending.

When Bank One makes the initial loan, both its assets and its liabilities temporarily increase to $190,000, reflecting the addition of the loan to its earning assets portfolio and the addition of the newly created demand deposit to its total liabilities. As soon as the borrower uses the newly created funds, however, Bank One's assets and liabilities decline to their pre-loan level."

And so this process continues from bank to bank thereby inflating the economy by adding more units of currency for each transaction. And as each transaction takes place, banks within the banking system are able to continue to create more and more new currency.

No longer available publication from the Federal Reserve Bank, titled "Two Faces of Debt", gave an excellent explanation of how the counterfeiting scheme operated.

This is a quote from the publication:

"… a money creation function

Debt does more than simply transfer idle funds to where they can be put to use—merely reshuffling existing funds in the form of credit. It also provides a means of creating entirely new funds—funds needed to finance the greater volume of new projects and spending that contribute to economic growth.

Again, checkable deposits in commercial banks and savings institutions are debts—liabilities of these depository institutions to *their depositors. But checkable deposits are also the money used for most expenditures. How do these deposit liabilities arise?*

For an individual institution, they arise typically when a depositor brings in currency or checks drawn on other institutions. The depositor's balance rises, but the currency he or she holds or the deposits someone else holds are reduced a corresponding amount. The public's total money supply is not changed.

The Fed publication explains that "New money has been brought into existence by expansion of depository institution credit."

<u>But a depositor's balance also rises when the depository institution extends credit—either by granting a loan to or buying securities from the depositor. In exchange for the note or security, the lending or investing institution credits the depositor's account or gives a check that can be deposited at yet another depository institution. In this case, no one else loses a deposit. The total of currency and checkable deposits—the money supply—is increased. New money has been brought into existence by expansion of depository institution credit.</u> Such newly created funds are in addition to funds that all financial institutions provide in their operations as intermediaries between savers and users of savings.

<u>But individual depository institutions cannot expand credit and create deposits without limit. Furthermore, most of the deposits they create are soon transferred to other institutions. A deposit created through lending is a debt that has to be paid on demand of the depositor."</u>

Are YOU the borrower or is the BANK?

This last statement is the most incredible of all. Most consumers believe that they are borrowers in relation to credit card accounts; however, the reverse is true. They are in fact depositors, or lenders, and the banks are the borrowers who are required to return their customers deposit on demand. Many people, especially attorneys will claim that this is a misinterpretation of the statement. You decide; it's your money.

"Mandrake Mechanism"

There is a long list of other publications, but these are the best examples. The most complete investigation and research of the banking system was completed by G. Edward Griffin who wrote The Creature from Jekyll Island to explain what he discovered. If you will do a keyword search on www.google.com under "Mandrake Mechanism" and download a copy of Chapter 10 of his book, you can read it and get a very clear picture of the scheme. Here is his description of it using a metaphor from Mandrake the Magician:

“What is the Mandrake Mechanism?

It's the most important financial lesson of your life!

THE MANDRAKE MECHANISM . . . What is it? It is the method by which the Federal Reserve creates money out of nothing; the concept of usury as the payment of interest on pretended loans; the true cause of the hidden tax called inflation; the way in which the Fed creates boom-bust cycles.

Inflation – the hidden tax.

In the 1940s, there was a comic strip character called Mandrake the Magician. His specialty was creating things out of nothing and, when appropriate, to make them disappear back into that same void. It is fitting, therefore, that the process to be described in this section should be named in his honor. …

THE MANDRAKE MECHANISM: A DETAILED VIEW

Start with . . .

GOVERNMENT DEBT

The federal government adds ink to a piece of paper, creates impressive designs around the edges, and calls it a bond or Treasury note. It is merely a promise to pay a specified sum at a specified interest on a specified date. As we shall see in the following steps, this debt eventually becomes the foundation for almost the entire nation's money supply. In reality, the government has created cash, but it doesn't yet look like cash. To convert these IOUs into paper bills and checkbook money is the function of the Federal Reserve System. To bring about that transformation, the bond is given to the Fed where it is then classified as a . . .

SECURITIES ASSET

An instrument of government debt is considered an asset because it is assumed the government will keep its promise to pay. This is based upon its ability to obtain whatever money it needs through taxation. Thus, the strength of this asset is the power to take back that which it gives. So the Federal Reserve now has an "asset" which can be used to offset a liability. It then creates this liability by adding ink to yet another piece of paper and exchanging that with the government in return for the asset. That second piece of paper is a . . .

FEDERAL RESERVE CHECK

Here lies the mystery!

There is no money in any account to cover this check. Anyone else doing that would be sent to prison. It is legal for the Fed, however, because Congress wants the money, and this is the easiest way to get it. (To raise taxes would be political suicide; to depend on the public to buy all the bonds would not be realistic, especially if interest rates are set artificially low; and to print very large quantities of currency would be obvious and controversial.) This way, the process is mysteriously wrapped up in the banking system. The end result, however, is the same as turning on government printing presses and simply manufacturing fiat money (money created by the order of government with nothing of tangible value backing it) to pay government expenses. Yet, in accounting terms, the books are said to be "balanced" because the liability of the money is offset by the "asset" of the IOU. The Federal Reserve check received by the government then is endorsed and sent back to one of the Federal Reserve banks where it now becomes a . . .

Fiat Money = Money created by a government with nothing of tangible value backing it.

GOVERNMENT DEPOSIT

Once the Federal Reserve check has been deposited into the government's account, it is used to pay government expenses and, thus, is transformed into many . . .

GOVERNMENT CHECKS

These checks become the means by which the first wave of fiat money floods into the economy. Recipients now deposit them into their own bank accounts where they become . . .

COMMERCIAL BANK DEPOSITS

Commercial bank deposits immediately take on a split personality.

Fractional Reserve Banking

Will make your head spin!

On the one hand, they are liabilities to the bank because they are owed back to the depositors. But, as long as they remain in the bank, they also are considered as assets because they are on hand. Once again, the books are balanced: the assets offset the liabilities. But the process does not stop there. Through the magic of fractional-reserve banking, the deposits are made to serve an additional and more lucrative purpose. To accomplish this, the on-hand deposits now become reclassified in the books and called . . .

BANK RESERVES

Reserves for what? Are these for paying off depositors should they want to close out of their accounts? No. That's the lowly function they served when they were classified as mere assets. Now that they have been given the name of "reserves," they become the magic wand to materialize even larger amounts of fiat money. This is where the real action is: at the level of the commercial banks. Here's how it works. The banks are permitted by the Fed to hold as little as 10% of their deposits in "reserve." That means, if they receive deposits of $1 million from the first wave of fiat money created by the Fed, they have $900,000 more than they are required to keep on hand ($1 million less 10% reserve). In bankers' language, that $900,000 is called . . .

EXCESS RESERVES

The word "excess" is a tip off that these so-called reserves have a special destiny. Now that they have been transmuted into an "excess," they are considered as available for lending. And so in due course these excess reserves are converted into . . .

BANK LOANS

Money created out of thin air!

But wait a minute. How can this money be loaned out when it is owned by the original depositors who are still free to write checks and spend it any time they wish? The answer is that, when the new loans are made, they are not made with the same money at all. They are made with brand new money created out of thin air for that purpose. The nation's money supply simply increases by ninety per cent of the bank's deposits. Furthermore, this new money is far more interesting to the banks than the old. The old money, which they received from depositors, requires them to pay out interest or perform services for the privilege of using it. But, with the new money, the banks collect interest, instead, which is not too bad considering it cost them nothing to make. Nor is that the end of the process. When this second wave of fiat money moves into the economy, it comes right back into the banking system, just as the first wave did, in the form of . . .

MORE COMMERCIAL BANK DEPOSITS

The process now repeats but with slightly smaller numbers each time around. What was a "loan" on Friday comes back into the bank as a "deposit" on Monday. The deposit then is reclassified as a "reserve" and ninety per cent of that becomes an "excess" reserve which, once again, is available for a new "loan." Thus, the $1 million of first wave fiat money gives birth to $900,000 in the second wave, and that gives birth to $810,000 in the third wave ($900,000 less 10% reserve). It takes about twenty-eight times through the revolving door of deposits becoming loans becoming deposits becoming more loans until the process plays itself out to the maximum effect, which is . . .

BANK FIAT MONEY = UP TO 9 TIMES GOVERNMENT DEBT

The amount of fiat money created by the banking cartel is approximately nine times the amount of the original government debt which made the entire process possible. When the original debt itself is added to that figure, we finally have . . .

Money Supply goes up

Money Value goes down

TOTAL FIAT MONEY = UP TO 10 TIMES GOVERNMENT DEBT

The total amount of fiat money created by the Federal Reserve and the commercial banks together is approximately ten times the amount of the underlying government debt. To the degree that this newly created money floods into the economy in excess of goods and services, it causes the purchasing power of all money, both old and new, to decline. Prices go up because the relative value of the money has gone down. The result is the same as if that purchasing power had been taken from us in taxes. The reality of this process, therefore, is that it is a . . .

HIDDEN TAX = UP TO 10 TIMES THE NATIONAL DEBT

Without realizing it, Americans have paid over the years, in addition to their federal income taxes and excise taxes, a completely hidden tax equal to many times the national debt! And that still is not the end of the process. Since our money supply is purely an arbitrary entity with nothing behind it except debt, its quantity can go down as well as up. When people are going deeper into debt, the nation's money supply expands and prices go up, but when they pay off their debts and refuse to renew, the money supply contracts and prices tumble. That is exactly what happens in times of economic or political uncertainty. This alternation between period of expansion and contraction of the money supply is the underlying cause of . . .

There is nothing supporting our money except DEBT.

BOOMS, BUSTS, AND DEPRESSIONS

Who benefits from all of this? Certainly not the average citizen.

The only beneficiaries are the political scientists in Congress who enjoy the effect of unlimited revenue to perpetuate their power, and the monetary scientists within the banking cartel called the Federal

Reserve System who have been able to harness the American people, without their knowing it, to the yoke of modern feudalism.

RESERVE RATIOS

Never heard of "Fractional Banking" before?

You are paying for it!

The previous figures are based on a "reserve" ratio of 10% (a money-expansion ratio of 10-to-1). It must be remembered, however, that this is purely arbitrary. Since the money is fiat with no precious-metal backing, there is no real limitation except what the politicians and money managers decide is expedient for the moment. Altering this ratio is the third way in which the Federal Reserve can influence the nation's supply of money. The numbers, therefore, must be considered as transient.

At any time there is a "need" for more money, the ratio can be increased to 20-to-1 or 50-to-1, or the pretense of a reserve can be dropped altogether. There is virtually no limit to the amount of fiat money that can be manufactured under the present system. …

SUMMARY

The American dollar has no intrinsic value. It is a classic example of fiat money with no limit to the quantity that can be produced. Its primary value lies in the willingness of people to accept it and, to that end, legal tender laws require them to do so.

It is true that our money is created out of nothing, but it is more accurate to say that it is based upon debt. In one sense, therefore, our money is created out of less than nothing. The entire money supply would vanish into the bank vaults and computer chips if all debts were repaid.

Under the present System, therefore, our leaders cannot allow a serious reduction in either the national or consumer debt. Charging interest on pretended loans is usury, and that has become institutionalized under the Federal Reserve System.

The banking process is intended to confuse and deceive.

The Mandrake Mechanism by which the Fed converts debt into money may seem complicated at first, but it is simple if one remembers that the process is not intended to be logical but to confuse and deceive. The end product of the Mechanism is artificial expansion of the money supply, which is the root cause of the hidden tax called inflation.

This expansion then leads to contraction and, together, they produce the destructive boom-bust cycle that has plagued mankind throughout history wherever fiat money has existed. jekyll.htm

'The Creature from Jekyll Island' is available from: The Reality Zone"

Remember that the purpose of this section is to help you understand that the banks, your "creditors" are not losing anything. They have made a profit from you even if you never paid them a dime. You have no moral or ethical obligation to pay them anymore than you have an obligation to pay someone for stealing from your family. As people with integrity, we should always repay loans, legitimate loans, under the terms of the loan agreement.

How Do Creditors Really Make Their Money?

You would think that as consumers use their credit cards and make monthly payments that include interest, fees and penalties throughout the life of the account, and that the creditors profit directly from this regular income.

In order to understand the subtlety of this, you must have some understanding of the definition of "security". An example of a security is "A stock certificate, bond or evidence of secured indebtedness." This definition is very lengthy in Ballentine's Law Dictionary but essentially, a security is something you can buy and sell that secures an interest in something of value.

A note and mortgage is another example of a security. Mortgage lenders are able to group mortgages by the credit standing of each borrower and assign them into what is called a "mortgage pool". This is done by creating a new corporation or trust to own the group of mortgages, and then sell an interest in the pool of mortgages or receivables just like stock is sold in the stock market. This is known as securitizing mortgages. Virtually any receivable (regular income) can be securitized. This investment is also known as Mortgage Backed Securities (MBS) and supports 30% of the annuity market.

Other types of receivables such as credit card payments can also be securitized. These are known as Asset Backed Securities and have developed more recently than MBS. Chapter 2.1 of Salomon Smith Barney Guide to mortgage-backed and asset-backed securities explains:

> *"Asset-backed securities (ABS) are securities collateralized by the cash flows of a variety of receivables or loans. ABSs are mostly shorter-term assets, and in many respects, less complex than mortgage securities. ABSs have an element of credit risk, unlike U.S. government agency-backed MBS, but less prepayment and cash flow volatility. In the dawn of the new millennium year 2000, triple-A ABSs are taking on increasing importance as a high quality alternative to U.S. Treasury securities, and to highly rated corporate securities.*
>
> *The origins of the ABS market are actually derived from nonmortgage ABSs. In 1985, Chrysler Financial issued the first public ABS deal, in a securitization of its auto loan portfolio. In the early years, auto loans, particularly the big 3 auto manufacturers, dominated ABS issuance. Publicly issued credit cards securitizations were introduced in 1987, as the market expanded and diversified. By 1988, the ABS markets had many securitized asset classes, including home equity loans, manufactured housing and even boat loans."*

The fear of a poor credit rating securitizes ABS.

Unsecured debt such as those created by credit card accounts is viewed as a good risk by investors simply because of the creditor's ability to obtain a judgment against the customer if he defaults. They are also viewed as a good risk because of the creditor's ability to coerce regular payments even from people who really can no longer afford to make them but fear a poor credit rating. The purpose of the credit system is to coerce payment from consumers when they otherwise would not pay.

Credit card issuers typically sell or assign their receivables (monthly payments from their customers) to investment pools for securitization and then act as the servicing agent or manager to collect and sue to enforce payment and collections. **One of the facts ignored by the court system is that the creditors who file lawsuits to collect on unpaid credit accounts are not the legal owners (holders in due course) of the credit accounts and therefore, are not able to legally sue, or state a claim for relief.** Most attorneys who represent creditors will jump out of their seats to argue with you on this point; however, anyone can argue, but the truth is what it is. In most creditor lawsuits, the creditor is acting as the servicing agent for the investor or investment entity (ABS); however, it is doubtful that it would ever be admitted or even disclosed simply because it would raise too many other questions. Giving them the benefit of the doubt, if this arrangement exists as research indicates, then it stands to reason that the servicing agreement authorizes the creditor to advance claims against account holders for defaults.

You will probably find the following quotes as intriguing:

ROBERT H. HEMPHILL (Credit Manager of Federal Reserve Bank, Atlanta, Georgia)

"This is a staggering thought. We are completely dependent on the Commercial Banks. Someone has to borrow every dollar we have in circulation, cash or credit. If the Banks create ample synthetic money, we are prosperous; if not, we starve. We are, absolutely, without a permanent money system. When one gets a complete grasp of the picture, the tragic absurdity of our hopeless position is almost incredible but there it is. It is the most important subject intelligent persons can investigate and reflect upon. It is so important that our present civilization may collapse unless it becomes widely understood and the defects remedied very soon."

ALEXANDER HAMILTON

"To emit an unfunded paper as the sign of value ought not to continue a formal part of the Constitution, nor even hereafter to be employed; being, in its nature, pregnant with abuses, and liable to be made the engine of imposition and fraud; holding out temptations equally pernicious to the integrity of government and to the morals of the people."

ABRAHAM LINCOLN

"I have two great enemies: the Southern Army in front of me, and the financial institutions to my rear. Of the two, the one in my rear is my greatest foe..." "I see in the near future a crisis approach which unnerves me and cause me to tremble for the safety of my country. Corporations (of banking) have been enthroned, an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until the wealth is aggregated in a few hands and the Republic destroyed."

From Founding Fathers to more recent statements of this incredible abuse and danger:

WALTER WRISTON, former chairman of the Citicorp Bank

Truth-In-Government Act

"If we had a truth-in-Government act comparable to the truth-in-advertising law, every note issued by the Treasury would be obliged to include a sentence stating: **"This note will be redeemed with the proceeds from an identical note which will be sold to the public when this one comes due."** When this activity is carried out in the United States, as it is weekly, it is described as a Treasury bill auction. But when basically the same process is conducted abroad in a foreign language, our news media usually speak of a country's "rolling over its debts." The perception remains that some form of disaster is inevitable. It is not. To see why, it is only necessary to understand the basic facts of government borrowing. The first is that there are few recorded instances in history of government-any government-actually getting out of debt. Certainly in an era of $100-billion deficits, no one lending money to our Government by buying a Treasury bill expects that it will be paid at maturity in any way except by our Government's selling a new bill of like amount.

CONGRESSMAN JERRY VOORHIS

"The banks -- commercial banks and the Federal Reserve -- create all the money of this nation and its people pay interest on every dollar of that newly created money. Which means that private banks exercise unconstitutionally, immorally, and ridiculously the power to tax the people. For every newly created dollar dilutes to some extent the value of every other dollar already in circulation."

RUSSELL L.MUNK, former Assistant General Counsel, Department of the Treasury

"Federal Reserve notes are NOT dollars."

"Federal Reserve Notes are not dollars."

CONGRESSIONAL RECORD, MAY 11, 1972

"Some people think the Federal Reserve Banks are United States government institutions, they are not government institutions, they are private credit monopolies."

JOHN MAYNARD KEYNES, (chief architect of our current fiat-paper money system)

"By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens"

"If governments should refrain from regulation..... The worthlessness of the money becomes apparent and the fraud upon the public can be concealed no longer"

BENJAMIN DISRAELI, former British Prime Minister

"The world is governed by very different personages from what is imagined by those who are not behind the scenes."

The credit card industry is the most profitable one in the United States with annual earnings in the $30 billion range. Many people might be surprised to learn that a single credit card issuer -- MBNA -- earned 1.5 times more profit than McDonalds in 2004. **Citibank, another major credit card issuer, earns more profit than both Microsoft and Wal-Mart. They manufacture no products or have nothing tangible to sell.**

How did the credit card industry become so profitable? With Americans charging 1.5 trillion dollars per year on their credit cards, one can understand why the industry is so profitable. Each time a credit card is used, a merchant pays a small fee. In addition, about half of all Americans habitually carry a balance on their high interest rate credit cards which is a nice cash cow for the credit card banks.

The credit card industry really started to become profitable as a result of deregulation. The former governor of South Dakota, Bill Janklow, worked hard to deregulate the credit card industry in order to allow them to cheat the public. (Now you know why many credit card companies are based in South Dakota). In addition, the Supreme Court decision in the Smiley v. Citibank case lifted fees on what credit card banks could charge. As a result, fees began to climb from a modest $5 to $10 to today's $29 to $39 fee for paying late or going over your credit limit. It is predicted that these fees will climb to $49 to $59 in the near future. This is not surprising, as these fees are the number one source of revenue for credit card banks. **This is more than what they get each year from consumers in just income from interest.**

Credit card banks also use specific marketing tactics to increase their profits. The most widely used marketing tool is the offer for a zero percent introductory interest. Statistics compiled by the credit card industry anticipate that many people will accumulate quite amount of debt on the card while the rate is at zero percent. This is like gambling statistics to a casino, you cannot beat the house and the longer you play the better chance you have of losing. When the introductory period ends the interest rate increases to 17 or 19%. The credit card bank earns significantly more profit than it would if it had never offered the zero percent rate at all.

Credit card fees are the #1 source of revenue!

A second scheme used to increase profits is to require a minimum monthly payment of only 2% to encourage cardholders to continuously carry a balance so they can rake in more interest income. The good news is that many Americans pay their cards off in full. But there are still too many consumers who carry a balance and regularly pay only the minimum each month. Creditors prefer these types of payments of course. There is more profit for them for accepting payment over a longer period of time in this situation.

BEWARE

"UNIVERSAL DEFAULT"

Another ruse that increases profits involves inserting a "universal default" clause in the credit card agreement. This clause, usually written in a manner that many attorneys cannot understand, gives the credit card issuer the right to raise your interest rate to an extremely high rate -- 28% or 30% -- if you miss a payment to them, to another creditor or your FICO credit score drops for any reason. **For example, if you took out a home equity loan, your additional debt might lower your FICO score enough so that your credit card bank decides you are now a high risk customer, even if you have never missed a payment to them or any other creditor in the last 20 years.**

And another scheme, more in line with actual fraud that has not yet been publicized as such, is the binding arbitration clause that creditors slip into your amended credit agreement. This is the one they mail you along with your monthly statement, sort of like saying "by the way". This seemingly harmless "by the way" says that by continuing to use the account, you waive your rights to have a jury hear any disputes you might eventually have with the creditor and that you waive your rights to even have a court of law hear the case. In fact, this clause says you agree that they no longer are required to sue you in court in order to obtain a judgment and garnish your wages, levy your bank account or take the equity in your home. Oh, and you also waive your right to be part of any class action lawsuits which might be filed against them in the future.

Be certain to read the notices sent with your credit card statement.

One of the largest perpetrators of this fraud is MBNA through its law firm, Wolpoff & Abramson. Their law firm is the official arbitration manager for the National Arbitration Forum (NAF), yet they also represent MBNA in claims brought before the NAF against unsuspecting consumers. If you want to be shocked about this, do a keyword search on google.com under "Wolpoff & Abramson" and you will find an enormous list of groups and individuals with similar complaints against them.

A recent federal suit in New York challenges this scheme. The law firm representing the plaintiffs is Berger & Montague, P.C. and the case number is 05 CV 7116 (WHP) (SDNY), assigned to the Honorable William H. Pauley III, presiding judge in MDL No. 1409

The following article was reported by Carrick Mollenkamp for the Wall Street Journal in September 2005.

"*Did credit-card companies collude to force arbitration?*

Many of the largest U.S. credit-card companies require customers to sign away their ability to take disputes to court and instead settle disagreements in arbitration.

Now that practice itself is under attack in court. A lawsuit filed recently in federal court in New York City alleges the credit-card *companies held secret meetings where they colluded to promote arbitration, in violation of federal antitrust laws.*

The complaint alleges that eight of the nation's biggest card issuers -- Bank of America Corp., Capital One Financial Corp., J.P. Morgan Chase & Co., Morgan Stanley's Discover unit, Citigroup Inc., MBNA Corp., Providian Financial Corp. and HSBC Holdings PLC of the United Kingdom -- "combined, conspired and agreed to implement and/or maintain mandatory arbitration."

Some of the banks named allegedly convened a group in 1999 called the "Arbitration Coalition" or "Arbitration Group," the complaint says.

The suit, which was filed last month and is seeking class-action status, claims that bank representatives spoke or met at least 20 times from 1999 to 2003 to share experiences from arbitration as well as advice on how to set up arbitration agreements with consumers that would withstand challenges in court.

In general, it is illegal under federal antitrust law for competitors in any industry to secretly collude to restrict trade or commerce.

A spokeswoman for Capital One said in a statement that the company doesn't comment on pending litigation but added that its "arbitration clause allows either party involved in a dispute to have the case considered by an impartial arbitrator to determine a final and binding resolution to the problem."

Representatives of the other banks either declined to comment or couldn't be reached. The financial firms named in the case have yet to respond to the substance of the allegations in court.

The case, filed on behalf of seven plaintiffs who live in California, Pennsylvania, New York, Illinois and New Jersey, comes as mandatory arbitration clauses are becoming increasingly common in industries ranging from cable television to Wall Street brokerage firms.

Companies have argued that arbitration provides a speedy and fair alternative to litigation and prevents disputes from escalating into class-action complaints that can cost them and their shareholders dearly.

Consumer-rights advocates claim the practice unfairly removes consumers' right to pursue a class-action complaint or a jury trial over such things as late-payment penalties while also allowing companies to settle claims with little publicity.

A recent study by Ernst & Young, citing criticism of arbitration, reported that while consumers often can opt out

You may be able to opt-out of mandatory arbitration.

of mandatory arbitration clauses, they rarely know such an option exists and that it can be buried in a card agreement's fine print. The study found consumers prevailed more often than businesses in an arbitration. Ernst & Young said it was engaged by the law firm Wilmer Cutler Pickering Hale and Dorr, which has worked with card companies.

The case against the credit-card companies also gives details on the practices of a Minneapolis-based group called National Arbitration Forum, one of several national arbitration panels that hear disputes between companies and customers across a wide range of industries.

According to the complaint, NAF billed itself in one solicitation as "the alternative to the million-dollar lawsuit." The complaint doesn't specify who the solicitation was aimed at, but says: "The clear implication of this appeal to corporate clients is that arbitration through NAF will effectively eliminate any significant remedy in a consumer dispute, whatever the underlying merits."

The complaint also alleges the group said that its rules provided for "very little, if any, discovery" -- the legal term for fact-finding once a case has been filed. NAF isn't named as a defendant in the suit.

Curtis Brown, the general counsel for NAF, said in an emailed response to questions: "Since we are not a party to the lawsuit, I would direct you to the parties and their lawyers for a comment." He said NAF provides unbiased arbitrators and he cited past court decisions establishing that the NAF treated consumers fairly.

The central allegation in the case concerning arbitration clauses is that the defendant banks worked together to create or maintain mandatory arbitration clauses as a way to thwart class-action lawsuits brought by consumers. The plaintiffs, represented by Berger & Montague of Philadelphia and other firms, are seeking to have the mandatory arbitration provisions in the complaint declared void.

According to the complaint, two prominent law firms advised the banks in creating the arbitration group or attended meetings where strategies for discussing arbitration were discussed. Those firms, not named as defendants in the suit, are Wilmer Cutler, of Boston and Washington, D.C., and Ballard Spahr Andrews & Ingersoll of Philadelphia.

Representatives of Wilmer Cutler were unavailable for comment. Ballard Spahr declined to comment.

The complaint alleges that the banks began discussing the issue of mandatory arbitration clauses in the late 1990s, the same time that the clauses were introduced in the industry. The agenda for the first

Arbitration Coalition meeting, held in the summer of 1999, outlined how the group could work together on promoting mandatory arbitration, the complaint alleges.

Among the proposed steps were "sharing best practices" and drafting "enforceable arbitration clauses," the complaint alleges. Two additional groups were formed: the "Consumer Class Action Working Group" and the "In-House Counsel Working Group," the complaint says.

For a conference call in the summer of 2001, bank representatives were given the access-code word, "arbitration," the complaint alleges. The agenda, according to the complaint, included seeking ways to protect the banks from plaintiff lawyers and ways to create an informal " 'information please' email network."

Late and Over-the-Limit Fees account for more than HALF the credit card industry REVENUE!

Although the credit card industry earns more than one trillion every year, they aren't satisfied with that, and have adopted dubious tactics to further fatten their wallets. Late and over-the-limit fees now account for more than half of their revenues, so they like to encourage or trick customers into paying some sort of penalty fee. They are getting away with it. It is predictable that they will keep raising their fees up and up -- just a few years ago a penalty fee was about $10. Now the average is $29.00. Consumer groups estimate that soon these fees will average $59.00.

Late and over-the-limit fees are not the only methods companies use to rake in trillions each year. There are also the credit insurance programs, universal default policies, dishonest marketing campaigns and other stupid card tricks. Many of the major issuers -- First USA, Chase, Capital One, Providian, Citibank -- have been sued over allegations of unfair billing practices and accused of blatantly using tactics to cheat customers out of money. Some of these tactics are outlined below.

- Not posting your payment on the day it's received -- Federal law requires credit card companies to post your payment on the date it is received. If they fail to do so, they cannot assess you late charges or added finance charges.
- Post only those payments received by 9:00 a.m. or 3:00 p.m. on a given date.
- Payments received at 9:01 a.m. are posted the next day despite the fact that all the major card issuers have payment processing centers that operate 24-hours a day, seven days a week.

Send your payment 10 days prior to due date.

Best way to fight back: send in your payment at least 10 days before the due date. If you can't do that for one reason or another, arrange to make your payments electronically by signing up at your credit card issuer's website so you can quickly zap a payment to them and they can't claim that they didn't receive your mailed payment until after the due date. It is interesting to note that almost all of the major credit card banks used to allow customers to quickly zap a payment to them via Paypal.com free of charge. Of course, this must have put a big dent in their late fee revenue so some of them stopped allowing this (Providian and First USA to name two).

Tricking You into Paying Late

Do you KNOW what date your bill is due?

Federal law requires that credit card issuers mail you your statement at least two weeks before the due date, so companies have to resort to other tactics to get you to pay late. You know that your credit card payment is due on the 25th of the month, or do you? Your issuer might suddenly change it to the 20th of each month to try and get you to mail it in late. If it's received late, they will slap you with a $39.00 late fee. If it's late two or more times, they can legally increase your interest rate dramatically, to as much as 29%. At various times, several credit card issuers have even resorted to not mailing out statements at all to encourage customers to pay late under the theory that "it is a courtesy that we mail statements out, not a requirement." [First USA actually used that as an excuse once and lost many customers as a result.]. Best way to fight back: Always open your monthly statement immediately upon receipt and check the due date. Don't be surprised if it has suddenly moved up five days and you received your statement "late". You might have to immediately write a check and get it in the mail that day to allow at least seven days for it to get to them before the due date. You don't want it to arrive at 9:01 on the due date do you? If it does, you will be assessed a late fee.

Penalizing You for Carrying a Big Balance

If you carry a high balance on your credit card month-to-month, don't be surprised if you one day notice a small paragraph on your monthly statement that informs you your interest rate is going to increase from 7% to 28% next month. What the credit card company doesn't tell you when you sign up for the card with the low interest rate is that they almost always raise the interest rate dramatically on people who never pay down a high balance on the credit card or carry big balances with other credit card companies. It doesn't matter to them that you have always paid your bills on time and are never late. **You can be a customer of theirs for 20 years and never be late or miss a single payment, but one day they will decide that you are no longer a good customer and raise your rate to 28%.**

Credit Insurance

You do NOT benefit from credit insurance.

This scam is used almost universally by the big credit card companies because it is such a cash cow. Every single consumer group and financial counselor has nothing good to say about this type of insurance and all recommend that you don't sign up for it. You don't need this insurance and, even if you tried to take advantage of it, you probably couldn't. This is one of the greatest scams the credit card industry ever invented. For X amount each month, they promise to pay off your balance if you become unemployed or ill. But, actually, if you read the terms very carefully, you will realize that the odds of you ever getting a dime out of them are tremendously high. Sometimes credit card companies don't even bother to get you to enroll in this program -- they just sign you up without your permission and start charging you for it -- and some of them get sued for it. Credit card companies usually are forced to pay large judgments for this type of scam. In particular, Providian was forced to pay the largest judgment ever when it enrolled customers in credit insurance programs without their knowledge.

Universal Default

When you signed up for your credit card, there was a provision in the card agreement that informed you in legalese that, if you missed or were late with a single payment to any other creditor, be it another credit card company, your mortgage or auto loan lender, or any type of payment whatsoever, they reserved the right to raise your interest rate to 28**%. It doesn't matter if the late payment notation is an error or evidence that the person is struggling with debt, they will raise your rate.** It doesn't make any sense to do this, particularly to someone who is struggling with debt, because it often drives them into default or bankruptcy, but the credit card industry is so greedy and dishonest and amoral that they simply don't care. Best way to fight back: Don't carry a big balance on a credit card and always pay it off each month. That way, it doesn't matter if the interest rate is 3% or 300%.

False Marketing Campaigns

Most consumers don't realize that the zero percent or low interest rate credit cards they see advertised on the Internet, in magazines and on the television are reserved only for those with excellent FICO credit scores that are 700 or higher. Since 75% of Americans have FICO credit scores below 700, odds are you won't qualify for a premium card. And if you do qualify, you probably don't need their low interest rate credit card anyway because you pay your balances off in full each month. The credit card companies are being very deceptive in this advertising because they know that most of the people who sign up for the card are not going to qualify for the zero or 3% interest rate, but instead, are going to be offered a card with a much higher interest rate, about 18%. These bogus offers you see advertised are just a deceptive lure.

Interest Rates that Never Decrease

Most credit cards that are issued come with a variable interest rate, meaning they are tied to an economic indicator, most often the prime lending rate. When the prime lending rate decreases, the interest rate on the credit card should decrease too, right? Well, most of the time it doesn't. To avoid lowering it, credit card banks simply raise their margin rate to compensate. The prime rate decreased for a significant period of time the last few years. Did your credit card interest rate decrease as well during that period? Probably not. Of course, when the prime lending rate began to increase in 2004, credit card interest rates rose accordingly.

Marketing Credit Cards to College Students

If you are one of the few people who can't seem to get a credit card or can't get one with a decent credit limit, consider enrolling in college. Your local community college will do just fine -- take a class or two, but remember when you enroll at the college, check the box on the application that allows them to sell your personal information to anyone who asks for it. That way, you will be besieged with credit card offers from the big credit card banks who love to give big credit limits to college students, most of whom don't even have jobs or an income anywhere near high enough to qualify for the credit cards with $2,000 or $5,000 limits. A scary percentage of college students leave college owing one or two credit card companies a great deal of money, with no means to pay it back. Sadly, dozens of these young people have committed suicide as a result. The credit card companies don't care about that. They pretend to care by creating little booklets for young people that warns them how to use credit wisely. But they encourage these students to run up big debt on trips, shopping sprees and the like with zero percent introductory offers and minimum monthly payments so low it will take 500 years to pay the card off if you just paid the minimum. All this because they're willing to bet that the parents are going to pay the cards off if Junior can't, just to keep him out of trouble.

Credit card companies have published booklets for college students on how to use credit wisely.

Ignoring Your Billing Dispute

Every day hundreds of people open their credit card statements and find some sort of error or omission. Perhaps there is a charge they didn't make or they were credited for making only a $10.00 payment instead of the actual $100.00 they sent. And these people phone the credit card company and are assured that the error will be fixed. But then the next month arrives and the latest statement does not show the correction. A second phone call is made and the person is once again assured that the error will be corrected, but the third statement arrives and it still isn't corrected. A third phone call is made and the person is told that she has forfeited her right to have the error corrected because she did not comply with the Fair Credit Billing Act and notify them in writing of the mistake within 60 days, as this law requires. Of course, the credit card company did warn you of this since they are required by federal law to provide you this information in print along with your statement (it is usually on the back of your statement). But most people don't read that statement or know about the law and certainly don't want to take the time to write a letter. How to fight back: **always communicate with credit card companies in writing.** If the matter involves protecting your legal rights in any way, send the correspondence certified mail, return receipt requested. [See Resolving Billing Disputes]

Card Cancellation Fee

This is a relatively new tactic used by only a few credit card companies, but expects it to be used by many credit card issuers in the future. Imagine cancelling your card because you have been slapped with a bogus $39 late or over-the-limit fee, only to find out you will also be charged another $59 for closing your account! One instance of this happening made national news: Customers of Advanta became so angry over unscrupulous billing practices that hundreds of them began closing their accounts. Advanta responded by immediately adopting the policy of charging $25 to anyone who cancelled their card to keep their revenues up.

If you're feeling frustrated by reading all of the above, perhaps it will make you feel a little better to know that sometimes consumers win. A good example is First USA (now Bank One). Several years ago, they were treating their customers so abusively that they began closing their credit card accounts en masse. This mass defection of customers cost First USA millions in lost revenue.

Class Action Lawsuits Filed Against Credit Card Companies

Below are summaries of class action lawsuits filed against major credit card banks. This is not a complete list, just a few samples.

First USA (now owned by BankOne)-- A class action lawsuit was filed against First USA when it changed the due date so that some customers, accustomed to paying by a certain date each month would be caught off guard. Many of them would send in their payments late, not realizing that their due date was a few days earlier than they thought. First USA charged customers $29 every time a payment was late. When two payments were received late, they increased the interest rate 10 full points. (First USA has been accused of this practice more than once.)

First USA once failed to send out monthly statements to many of its customers which, in turn, caused many customers to pay late or not at all that month. When customers began complaining about the $29.00 late fees assessed as a result, First USA claimed the mix up was a result of a computer glitch; however, they refused to remove the $29.00 late fees and give up the millions in extra revenue. Instead, they announced that they "had no duty to send out a statement each month" and it was just too bad for their customers.

Chase -- If you have a card issued by Chase, perhaps you noticed a ten cent rebate on of your monthly statements several years ago. That generous refund was the result of a class action lawsuit filed against Chase for dubious billing practices (not posting your payment on the date received as required by federal law). You only got ten cents because the lawyers who filed the class action suit took a big chunk of the $22 million settlement as their fee. There was so little left that everyone got just ten cents. (Most class action lawsuits against credit card companies

Class action lawsuits are a windfall for the attorneys, not the consumers.

result in a windfall for the attorneys with very little left over for consumers.)

Providian -- The king of unscrupulous billing practices and immoral behavior, Providian is considered to be the baddest of the bad credit card companies. It got caught over billing its customers and had to pay the largest judgment ever awarded against a credit card company, $300 million. They improperly assessed late fees and charged customers for products never ordered (e.g., credit insurance). Many visitors to this website reported that they received checks from the California Attorney General for as much as $200.00 as a refund for Providian's billing overcharges. Providian was also signing up its customers for credit insurance without their permission.

Advanta -- Settled a class action lawsuit by agreeing to pay $7.2 million to reimburse customers who were guaranteed a low rate, but were charged a higher rate.

Sears -- Paid $36 million to settle a lawsuit filed by customers who claimed their interest rates were raised after Sears promised it would not raise them.

Capital One -- Several recent class action lawsuits have been filed against Capital One and are still pending. This credit card company once had a good reputation. It led the way in offering the first low interest rate card on purchases, balance transfers and cash advances. It forced other issuers to lower their rates, too. But then Capital One customers started complaining that their payments, mailed in a full two weeks before they were due, were being marked as having been received late. And Capital One was charging them late fees and jacking up their interest rate as a result, which is why the lawsuits have been filed. One case that received wide media exposure involved a man who had emergency open heart surgery. Due to his illness, he mailed in his Capital One payment late one month. Actually, Capital One received it just one day late. When he called to explain what had happened, they coldly told him "too bad" and jacked up his interest rate from about 7% to 21%. (Of course, Capital One isn't alone in using this tactic -- Citibank, MBNA, Providian, First USA do this as well.)

Citibank -- Paid a $45 million settlement for improperly assessing late fees. Citibank is one of the banks that will definitely raise your interest rate to as high as 28% if any negative information appears on your credit file -- even if you have always paid them as agreed. And they won't change your rate back if you submit proof to them that the negative information on your credit report was in error.

MBNA -- Paid an $8 million settlement for improperly assessing late fees.

The above is by no means a complete list of lawsuits. As several banking regulators have stated publicly, "most credit card companies use sneaky tactics, but only a few are singled out for punishment."

Did Good Credit Leave You Lots of Debt?

The one thing that good credit can certainly assist you in doing, as it does for many consumers, is get you into unbearable and perpetual debt. For most people, the only way to pay down these accounts is if they had a windfall income, like winning the lottery. This is humorous for many people to hear, but once reality is understood, it should be frightening. Good credit did nothing for you but enable creditors to steal your net worth and cripple your ability to invest in your future. **Good credit supports you in betting against yourself and transferring your wealth and potential wealth to creditors.**

Creditors will give you more and more credit as long as you are able and willing to make regular and timely minimum payments. Once you reach that limit of not being able to make timely payments, the creditors report to your credit file that you are a higher risk of nonpayment and increase your interest rate and minimum payments. The credit history also facilitates one creditor in communicating this new level of risk to other creditors, so all of them can view your credit file and determine for themselves that it is time for them to increase your interest rate and minimum payments as well.

Just because you have large debts and/or are not able to pay on the schedules dictated by your creditors, it does not change the person you truly are. Equate this to how drug dealers give free drugs to children at school. Then when they are hooked, sell it to them at very high prices. You have been taken advantage of, robbed. That credit card you got in the mail is nothing more than a thief in your house.

That credit card you got in the mail is a thief in your house!

Many well respected people throughout history had debt problems, even without the current consumer credit system we now have in our economy. Thomas Jefferson at the time of his death owed, adjusted for inflation, $10,000,000. Abraham Lincoln had his surveying tools seized and sold to pay off his over due bills. Daniel Boone went bankrupt and creditors forced him to move out of Kentucky and in 1788 Boone settled at Point Pleasant on the Ohio River in what is now West Virginia. Rembrandt went bankrupt in 1656. Mike Tyson went bankrupt after earning over $300 million dollars. M.C. Hammer filed for bankruptcy. P.T. Barnum filed for bankruptcy before he started his circus. John Henry Heinz's company filed for bankruptcy in 1875.

There are as many as nine times more bankruptcies involving a business than the current government data suggest," says the California Law Review report by law professors Elizabeth Warren at Harvard University and Robert Lawless at the University of Nevada-Las Vegas

Official court statistics show that business bankruptcy filings hit a peak of 88,278 in 1987 and began to decline, falling to 37,078 in 2003. In the meantime, total bankruptcy filings were soaring, from 567,266 in 1987 to 1.6-million in 2003. As a percentage of total filings, business bankruptcies peaked at 18.6 percent in 1983 and fell to 2.3 percent in 2003.

Lawless and Warren dug deeper into the data by questioning 1,771 individuals who had filed for bankruptcy in five states and analyzing their court records. Even those who described themselves as business owners had not checked the "business" box on their bankruptcy filings. They concluded that the real number of business-related bankruptcies was closer to 300,000 than to the 37,078 reported in 2003.

Interest Rates

In 1978 the Supreme Court ruled in Marquette vs. First Omaha Services that it was legal for nationally chartered banks to export more costly terms of their cards to states where the laws regarding interest rates restricted such practices. In other words, if a creditor was resident or organized in a state where the interest rate was permitted to be higher, then it could impose that rate in whatever state it had customers. This is why creditors now organize themselves in states with the highest legal interest rates and always lobby for higher limits in that state legislature.

Minimum Payments

The common news story about how the Office of the Comptroller of the Currency mandated that banks increase the monthly minimums so that consumers would be out of debt quicker is a lie. It is nothing more than a ruse by the credit industry to shift the blame onto the government. The economic reality of this is that the banks are the ones that wanted the higher monthly payments and to get it in such a short time while avoiding too much public scrutiny, they partnered with the Comptroller and had that office take the blame. The economic reality is that in today's quickly inflating economy, where currency is worth less at a faster and faster pace, the banks need to recover this loss to inflation by getting money more quickly from their customers. Ironically, it is the banks' origination of new credit money that is largely responsible for the inflation.

Let's review that common example of how long it would take to pay a typical credit card debt of $5,000 if beginning today, assuming you pay the monthly minimum at below average interest rates (18%). If your minimum payment is 2.5% of the balance, it would take you well over 25 years to pay off the $5,000 and your total interest paid after that time would exceed $7,000 beyond the principal.

Just to make a simple comparison, what if you took that $5,000 and invested it in the stock market for that same period of time, 25 years? And what if your average annual return was 1/3 of the interest rate you would have paid the bank, 6%? In the same 25 years you would have approximately $9,600, that's assuming you didn't add more to the principal. Does a positive $9,600 sound better than a negative $12,000?

Using Credit as Your Best Slave

The secret in the business world is that while consumers use credit to purchase things which only cost them money, are used up and discarded, wealthy businesses use credit to buy assets which pay them every month, and then use that money to buy things which ultimately do <u>not</u> cost them money, are used up and discarded.

The very credit and banking organizations are borrowers themselves. Yes, your bank actually borrows money just like you and other businesses. The difference between the way they borrow money and the way you have learned to borrow are direct opposites. In common language, the distinction is known as "good debt" and "bad debt". Good debt is used to purchase assets which create a net income or profit for the borrower. Bad debt is used to purchase liabilities requiring the borrower to pay the debt with money from other sources (e.g. his paycheck) instead of what he purchased the debt with.

Good Debt versus Bad Debt

Sometimes incurring personal debt is necessary and even practical; however, just like anything done in excess, too much personal debt can be very detrimental.

Almost no one can pay cash for his house, car or college education. But adopting practices which enable you to reduce these personal debts quickly is a good idea. Remember that investing in your largest personal long-term debt is one of the better ways to offset that liability. You probably will not hear this from many media sources, but it is a practice followed by people with the "millionaire mind". In order to offset the personal liability of a home mortgage, you can invest in mortgage backed securities, or annuities funded mostly by mortgage or other consumer debt securities.

Invest in mortgage backed securities.

To offset the high cost of quality college education, invest in programs such as the new 529 Plan or other vehicles that are designed to substantially reduce the cost of college tuition by taking advantage of the time value of money today. Any good financial planner can literally save you many tens of thousands of dollars on this personal expense or debt.

What is a 529 Plan?

It's an education savings plan operated by a state or educational institution designed to help families set aside funds for future college costs. As long as the plan satisfies a few basic requirements, the federal tax law provides special tax benefits to you, the plan participant (Section 529 of the Internal Revenue Code).

529 plans are usually categorized as either prepaid or savings, although some have elements of both. Every state now has at least one 529 plan available. It's up to each state to decide whether it will offer a 529 plan (or possibly more than one), and what it will look like. Educational institutions can offer a 529 prepaid plan but not a 529 savings plan (the private-college Independent 529 Plan is the only institution-sponsored 529 plan thus far).

This is an important example of how to offset your personal debt by investing in it. What's so great about a 529 plan? You're looking at four main advantages.

- First, you get unsurpassed income tax breaks. Your investment grows tax-deferred, and distributions to pay for the beneficiary's college costs come out federally tax-free. This treatment applies for distributions in the years 2002 through 2010. Unless Congress decides to extend this tax break, qualifying distributions made after 2010 will be taxable to the beneficiary (earnings portion only). Assuming that the student isn't earning hundreds of thousands of dollars running a dot-com company out of her dorm room, you should still save taxes with her lower income tax bracket. Your own state may offer some tax breaks as well (like an upfront deduction for your contributions or income exemption on withdrawals) in addition to the federal treatment.
- Second, you, the donor, stay in control of the account. With few exceptions, the named beneficiary has no rights to the funds. You are the one who calls the shots; you decide when withdrawals are taken and for what purpose. Most plans even allow you to reclaim the funds for yourself any time you desire, no questions asked. (However, the earnings portion of the "non-qualified" withdrawal will be subject to income tax and an additional 10% penalty tax). Compare this level of control to a custodial account under the Uniform Transfers to Minors Acts (UTMA).
- Third, a 529 plan can provide a very easy hands-off way to save for college. Once you decide which 529 plan to use, you complete a simple enrollment form and make your contribution (or sign up for automatic deposits). Then you can relax and forget about it if you like. The ongoing investment of your account is handled by the plan, not by you. Plan assets are professionally managed either by the state treasurer's office or by an outside investment company hired as the program manager. You won't even receive a Form 1099 to report taxable or nontaxable earnings until the year you make withdrawals. If you want to move your investment around you may change to a different option in a 529 savings program every year (program permitting) or you may rollover your account to a different state's program provided no such rollover for your beneficiary has occurred in the prior 12 months. (There is no federal limit on the frequency of these changes if you replace the account beneficiary with another qualifying family member at the same time.)
- Finally, everyone is eligible to take advantage of a 529 plan, and the amounts you can put in are substantial (over $230,000 per beneficiary in many state plans). Generally, there are no income limitations or age restrictions. Thinking about going back to college or graduate school in the future? Then set up a plan for yourself!

One last example, do you believe that insurance for auto, home and health is expensive? Would you consider buying the insurance carriers or at

INVEST instead of PAY

least shares of them by purchasing their stock? What about the rising costs of fuel? What could you do to offset those? If you said invest in the fuel industry, you are beginning to understand.

This does stray from the topic, however, experts say, your total monthly long-term debt payments, including your mortgage and credit cards, should not exceed 36 percent of your gross monthly income. That's one factor mortgage bankers consider when assessing the creditworthiness of a potential borrower.

It's far too easy to spend more than you can afford, especially when you pay by credit card. The average North American household with at least one credit card carries nearly a $9,200 balance, according to CardWeb.com, and personal bankruptcies have hit record highs in recent years.

Of course, avoiding debt at any cost is not smart, either, if it means depleting your cash reserves for emergencies. The challenge is learning how to judge which debt makes sense and which does not, and then wisely managing the money you do borrow.

Good debt includes anything you need but can't afford to pay for up front without wiping out cash reserves or liquidating all your investments. In cases where debt makes sense, only take loans for which you can afford the monthly payments.

Bad debt includes debt you've taken on for things you don't need and can't afford (that trip to the Cayman's for example). The worst form of debt is credit card debt, since it usually carries the highest interest rates.

Sometimes the decision to borrow doesn't hinge on how much cash you have, but on whether there are ways to make your money work harder for you. If interest rates are low, compare what you'll spend in interest on a loan versus what your money could earn if it were invested. If you think you can get a higher return from investing your cash than what you'll pay in interest on a loan, borrowing a small amount at a low rate may make sense.

Most consumers shop for loans based on what amount in monthly payments they can afford with their paycheck. People who think like or actually have a net worth in excess of one million dollars shop for loans to buy things that will produce income which both makes the loan payments, pays operating expenses and leaves extra money each month as profit.

As an example, a normal young couple searches for a mortgage to buy a home based on rates and their ability to afford the monthly payments. This is 99% of the population. They expect to make the payments from their employment income, or even their business income, both of which they must work for.

What if instead they shopped for a mortgage in order to buy a quadraplex that netted them $350 per month and had an annual growth in equity of seven percent and allowed them to have tax deductions for depreciation (otherwise known as income)? They could then use this income to offset their personal mortgage and use the equity growth to further invest in more income producing assets. Would you believe that some people look for ways to acquire more debt so that they can increase their income? Many of these people are known as investors and anyone can be an investor by following very simple, time tested and productive habits.

Investors borrow to increase earnings, not to increase expenses.

Why is Non-Payment the Most Economical Solution?

Let's begin with the question we left off with in the previous section, what would you do with $600 a month if you did not pay your creditors? Many people would buy a new car on credit, or buy a new television or some other consumer item, a liability. Some of you could come up with a slightly better use, keep your mortgage current. And a few of you would be even more creative, invest it.

This is where many are left with nothing to imagine, but it doesn't mean that we cannot learn how to imagine the possibilities of investing $600 a month into something that will eventually return money back to you. Here is somewhat hypothetical example:

Let's say that you have $600 a month that you could do without if necessary. Either you or your friend have a small amount of cash you can use as a down payment to purchase a duplex in your neighborhood. You can purchase this with a mortgage (and no, you do not need excellent credit, or even your own credit to buy it) and the net operating income from rent after the mortgage payment is made, the management company is paid, and maintenance is covered is $150. That is a positive cash flow of $150 or more each month in exchange for a little shopping, calculating and paper work.

Remember now, you have not used the $600 per month yet, you're saving it for another investment, even though you have already made an investment that is now paying you and your partner $150 per month. Remember that the tenants are paying my mortgage and other operating expenses and that you are not taxed on the income until after you have paid all of your operating costs. You only used the $600 per month as a protection or security in case you could not find tenants or had an unexpected vacancy after the purchase.

A year passes and you now have $7,200 saved and are able to match your partner's $7,200 and buy a quadraplex, a four unit rental, with four tenants, twice as much income as the first investment. It is safe to say that this investment would return a little higher rate than the duplex, approximately $350 per month (instead of $300).

Aside from the more creative use of the money saved from non-payment, called "planned or deliberate non-payment", let's look at the reality of what late payments afford you. If you cannot pay what the creditor wants on schedule, your credit rating will suffer and paying under those circumstances means that there is no benefit to you. Your money is not yielding you any future profit – in other words, you are still paying money without any benefits to your credit rating or any reduction of debt because of interest and penalties. And you are certainly not enjoying a positive cash flow or gaining in equity from any asset you purchased with the credit money.

What are you risking?

> ***Struggling to make and deliberately not making payments yield the same on your credit file.***

You are risking the same poor credit rating that you were headed for when you had to miss that first timely payment. In the end, struggling to make payments and deliberately not making any payments will appear the same on your credit file. The difference will be in how much money you lost to get there.

Make no mistake, your banks and creditors are not your friends. To them, you are just a number, a blip in a database. Do not consider them any differently and your decision to pay or not to pay should be based on which consequences are best and worst for you personally.

Non-payment will put your employment income in jeopardy unless you protect yourself with a program such as the Due Process Ltd. Nominee Exchange Program, but everything else can be protected including your home and bank accounts, and with very unsophisticated and inexpensive methods. As for employment income, if you took no steps to mitigate that from being garnished, the restrictions imposed by the Consumer Credit Protection Act and state law would exempt more than 75% of your paycheck from garnishment, and one garnishment would prohibit other creditors from imposing additional garnishments until the first is satisfied. You could look at it just as if you obtained a refinance.

> ***Your banker is NOT your friend!***

> ***Can you qualify for the Nominee Exchange Program?***

Many people who take no positive action to protect themselves or resolve their debt problems might be paying $600 per month for all of their unsecured credit accounts, at about a 25% interest rate. By undergoing a wage garnishment, in the worst case, their monthly payments would drop to about $150 to $200 and the interest rate would drop to somewhere around 8% because of state laws on judgment liens. And, those payments would not begin in most cases for at least 18 months after you made your last payment, if they began at all. Plus, by protecting yourself with Nominee Exchange, you may not be required to pay out a single dime – EVER!

According to the statistics we have compiled since 1994, and more recently since 2001, you can expect that nearly half of any credit accounts to which you cease making payments may result in a lawsuit to enforce the collection against the balance. When can you expect this to happen? This usually happens close to twelve months from the last date of payment. Sometimes it is eight months, sometimes is eighteen and sometimes it can be many years.

This all depends on the creditor policies regarding collection on defaulted accounts, and their perceived ability to collect from you. As to the first, their collection policies, you have no control over as an individual. It is the vastness of the consumer debt market that influences these parameters. However, you have total control over what the creditor perceives as its ability to collect from you.

The simple solution is to arrange the things which can be taken from you in such a way that they cannot be taken, or that creditors perceive that they cannot easily be taken. This is the unofficial “rule number one” in any asset protection method. There are basically two ways to accomplish this, transfer the equity or asset to a corporation, trust or legal entity which does nothing but own that equity or asset. The other way is to use the corporation, trust or legal entity to hold a lien or encumber the title to the equity or property without transferring it.

How willing would you be to pay any creditor with this new knowledge and knowing that none of your income, money or property was at risk of being taken for not paying creditors?

There are thousands of attorneys, estate and financial planners with hundreds of proper methods of accomplishing what I have just explained. None of them can offer you a method to protect your employment income. The Nominee Exchange® is the only service of its kind. The next sections will detail the benefits of the program but not address general asset protection strategies.

Is It Legal or Illegal to Refuse Payment?

This question may leave us with the impossible task of proving a negative, very much like trying to prove that one religion is right and another is wrong. There are two categories of law, civil and criminal. Criminal laws impose penalties in the form of fines and imprisonment for criminal conduct. Civil law provides remedies to private parties for things like breach of contract and its many species or variations. Criminal law is enforced by the police power or the state and civil actions which are brought by private parties. There are causes of action that allow private parties to initiate criminal complaints and the state to initiate civil complaints, but these are the exception.

In order to qualify your complaint to be heard, civil or criminal, it must contain a complete list of allegations that are required to state a cause of action. If it does not, the court will not hear it, or will not accept jurisdiction. For example, if you are accused of murder, but the state fails to allege or identify a murder victim, the complaint or indictment will be dismissed for its failure to state a cause of action. It is necessary that the state identify a victim in order to sustain an indictment for murder.

The same is true of civil complaints. If a breach of contract is alleged, the relevant contract must be identified and entered into evidence. If this is not done, then the complaint will most likely be dismissed for its failure to state a claim or cause of action.

Debtors Prison? They do not exist any longer.

In England, many years ago, a debtor could be imprisoned for failure to pay debts. This however greatly inhibited the creditor from ever recovering. This was known as a system of debtors' prisons and was abolished in America. There is not now nor will there ever be a criminal cause of action for refusing to pay a credit card debt; however, a criminal indictment for the fraudulent use of another's credit account could be made if in fact you committed fraud while using another's credit account. You could also be indicted for fraud if you provided false or misleading information under penalty of perjury on a credit application. These cases are usually filed justly.

There is no criminal cause of action for "refusing to pay a credit card bill" or any variation thereof. There are no criminal penalties. The worst that can happen is that the creditor could file a civil action for things like breach of contract, default on note, open account, account stated, and/or unjust enrichment and seek a judgment for alleged damages (the unpaid balance plus fees, interest and penalties).

There are no criminal statutes making the refusal to pay a bill a criminal offense. The exemptions to this may be claims involving alimony or traffic fines imposed by the tax collector or certain types of tax obligations.

You cannot be imprisoned for refusing to pay credit card bills. You could suffer a judgment lien, wage garnishment, bank levy, asset seizure and the taking of your home equity. There are many ways to avoid these problems using standard asset protection methods. Many law firms provide this type of service. The service that no one provides except us (Due Process LTD) is protection against wage garnishment and bank levy. It is called the Nominee Exchange Program.

Settlement

Imputed Income definition is the difference between what you owed and what you paid to settle the account.

Many people are not fully informed of the tax consequences resulting from a settlement agreement. This is one reason to avoid any settlement agreements, either directly with the creditor, collector or through debt consolidation. You will have to pay federal income tax on the difference between what they said you owed and the amount you paid to settle the account. This is known as imputed income.

Here's how it works. You negotiate with your credit card company to get your bill reduced from $10,000 to $5,000. You only have to pay Visa $5,000, but the Internal Revenue Service is likely to tax you on the $5,000 you didn't have to pay back. That amount is known as discharge of indebtedness, or DOI, income.

Don't think you're free from the IRS if you don't get the form. The creditor may have reported the "income".

That's right. A debt forgiven won't be forgotten by the IRS. The agency considers it earned and taxable income. In fact, your debtor probably will send you a 1099 form detailing your miscellaneous income. Don't think you're free from the IRS if you don't get the form. The creditor may have reported the "income".

Imputed income is a tax imposed on a portion of a debt which you were forgiven during a settlement. It was established by an IRS Letter Ruling that there is no imputed income tax where there is no settlement of a debt or where the debtor is insolvent. To establish insolvency, a simple financial statement can be prepared or Form 656 (Offer in Compromise) provided by the IRS can assist you in determining if you are insolvent.

Furthermore, if your debt settlement is achieved because you protest an owed amount, **the forgiven debt is excluded from the rule.** Some people encounter this situation when they dispute credit card charges. For example, MasterCard contends you owe $1,000 but you didn't buy that diamond ring. The debate rages on for weeks. Finally, to put an end to the quibbling, you offer to pay $200 and MasterCard says okay. That $800 difference is a settlement of contested liability, and you're not liable for taxes on it.

Another exemption is when you are in bankruptcy proceedings. When you're paying a portion of what you owe because you've declared bankruptcy, the IRS does not consider the difference between those amounts discharge of indebtedness income.

Response to imputed income threat.

The following example is a response to a notice that the amount you did not or will not pay will be reported as imputed income. This is their attempt to coerce you into maintaining your payments. The response explains the problem and the reason why they cannot legally file this report, unless you make a payment arrangement and unless they actually lent you something.

> "*I recently received a communication from you indicating that if I did not pay you money to satisfy what you claim to be my debt to you for the above stated account, that you would send me a Form 1099 and report this non-payment to the IRS as my "imputed" income.*
>
> *Please be advised that imputed income can only be reported when there has been a settlement arrangement and a failure of payment according to its terms, and only when money was actually lent. Furthermore, I am insolvent as established by Form 656 published by the IRS and not subject to taxation for imputed income as per a recent letter ruling from the IRS. Finally, I have contested the entire amount you claim I owe since you risked nothing in the transaction.*
>
> *Your claims are false and fraudulent and if you persist, will be reported to the Criminal Division of the Inspector General's Office at the IRS.*"

Consolidation

Debt consolidation is another way to incur more bad debts to cover the real problem of your current bad debt. The sales pitch is that you can consolidate or group all your unsecured debts into one payment by attaching or securing a new loan to your house. This is simply another mortgage which requires you to give up your equity because of the loan amount, interest and fees.

In consolidating you could lose your home!

According to Chris Viale, general manager of a nonprofit credit counseling agency, seventy percent of Americans who take out a home equity loan or other type of loan to pay off credit cards end up with the same (if not higher) debt load within two years. These statistics underscore a major problem with debt consolidation: it feeds upon the tendencies that got you in trouble in the first place. By taking on yet another creditor, you're adding the proverbial fuel to the fire. In this case, you are losing your home equity and possibly your home.

RULE

You cannot borrow your way out of debt.

If you've taken on so much debt that you're looking for more as a solution, chances are you won't qualify for the very low interest rates you see advertised. Those generally go to people with stellar credit ratings.

Zero-Percent Credit Card

If you have no home equity, you might consider zero-percent credit cards to reduce debt. This of course violates the above rule.

Companies offer these rates as teasers -- enticements for you to switch credit card vendors. Much of the time, card companies target consumers with better credit, so that may leave someone struggling with debt without this option.

Even if you do qualify for a zero-percent or similar single-digit rate, it won't last forever. Make sure you know when it will end and what the rate is expected to jump to when it does.

A simply amortization illustrates this example: You transfer $20,000 of other debt to a zero-percent card and pay $1,000 on it by the time the rate jumps to 14 percent. If you make only the minimum monthly payments, it will take you 1,134 months -- or 94.5 years -- to erase your remaining $19,000 balance. Assuming you live that long, or your estate survives that long, you'll pay $64,805 in interest. And that's presuming you don't charge another thing during that time.

Debt Consolidation Loan

Did the credit card computations scare you into looking for another option? There's always a debt-consolidation loan. Offers for these financial products are an e-mail box staple. Chances are you get a dozen or more everyday suggesting this as the solution to your growing debt problem.

A major appeal of consolidation loans is convenience. Instead of paying 20 different creditors who are charging different rates at different times of the month, you take out one big loan and pay off all those accounts. Then you make a single payment on that loan once a month. But simplicity or convenience does not automatically translate to savings.

Before you agree, be sure that the costs of the new, bundled loan will truly be less than what you're already paying various creditors. For many consolidation-loan candidates, their current credit woes mean they won't get the lowest-available interest rate. Plus, when there is nothing to secure the loan (such as your home), expect the lender to bump up the rate.

No home to pledge, expect higher rates.

Calculate interest and fees on all your existing accounts to determine the total of the payments you now make. Then compare those amounts with the consolidation loan numbers to make sure it truly is a better choice.

And, as with any product, shop around. The bank down the street may offer an attractive loan rate but your local credit union could offer better terms.

Debt Management

Some experts favor debt management because it costs less and is quicker than a debt-consolidation loan. Someone owing $20,000 would end up paying $6,000 to $8,000 in interest and fees and be debt free in four to six years by using a credit counselor. If that person took out a 15-year home equity loan at 10 percent (because his credit wasn't good enough to get him a lower rate), simple amortization shows he'd end up paying $18,686 in interest on top of the twenty grand he borrowed.

BE CAUTIOUS!

Not all debt managers are reputable.

But if you just can't get a handle on your bills by yourself, you could explore credit counseling. Getting professional help in managing your debt can help you change your credit behavior. People that have taken on too much debt tend to go into denial; they'd rather not know how much debt they owe. A professional debt manager will make you face up to your obligations.

Credit counseling agencies also force you to stop racking up debt. In exchange for consolidating your debt and working with your creditors to reduce your payments, credit counselors require you to give up your credit cards.

Credit counseling, however, is not without its costs. One downside is that your reduced payment plan will probably show up as a mark against you on your credit report. Even though your creditor agreed to the reduced payment, you technically did not pay your account as called for in your original credit agreement.

An even more costly potential pitfall is the disreputable debt counselor. Some credit counseling and debt-consolidation companies are only interested in making a quick buck on debt-ridden consumers. Some firms offer poor and unreliable service with high fees.

In the end, remember that debt management is just another way to continue paying, if you can.

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