

# **Credit Repair Kit**

## **Introduction**

Feeling good about your financial situation helps you feel good about yourself. Healthy finances ward off stress about paying the bills or being able to buy that new house. Stress not only kills; it can negatively impact your eating habits and your overall outlook on life. If you start binging on junk food or drinking too much, your confidence and self-esteem takes a serious nosedive. Financial worries can also hamper your ability to shine at work, costing you raises, which could go a long way toward pampering your self or your loved ones.

But I have great news. Good credit, a healthy financial situation, and stability are in your future. The door to opportunities you never dreamed of is right around the corner.

One final comment before you read on: There is a lot of information in this kit, and some of the most valuable information begins after the chapters end. Take a moment to see what's there before you start working with your creditors. Read carefully the section on the importance of documentation, and make sure you actually document everything—every conversation, correspondence, every step you take—along the way, even if it seems insignificant. The importance of your documentation will prove itself in time, you'll see.

## **Everyone Has a Credit History/Rating**

Yes, everyone has one of these, even if you have never had a credit card or a loan. Your credit history is compiled in reports made by credit bureaus and provided to lenders, landlords, utility and insurance companies at their request.

When you apply for a credit card, mortgage, or other loan, the fine print on the application gives the lender permission to check your credit history. The lender usually requests a credit report from one of the “Big Three” credit bureaus. In theory, the bureaus merely report the raw data of your credit history and don't assign you any kind of “credit rating.” In reality though, credit companies do provide a credit rating in the form of a credit score. The lender looks at your credit score and decides whether to grant you the credit you are requesting. Of course, lenders also look at your total outstanding debts, your minimum monthly payments, even your credit limits to see how far into debt you could go if you max out your existing accounts. Primarily, though, they are really concerned with your record of delinquencies, accounts paid unsatisfactorily, and anything else that suggests how much of a credit risk you might be, all of which is used to calculate your credit score.

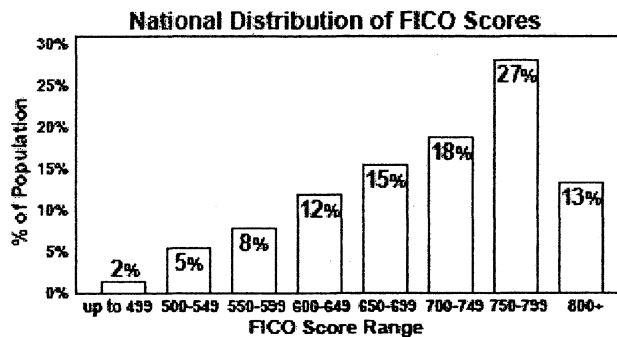
## About credit scores

When you apply for credit – whether for a credit card, a car loan, or a mortgage – lenders want to know what risk they'd take by loaning money to you. FICO® scores are the credit scores most lenders use to determine your credit risk. You have three FICO scores, one for each of the three credit bureaus: Experian, TransUnion, and Equifax. Each score is based on information the credit bureau keeps on file about you. As this information changes, your credit scores tend to change as well. Your 3 FICO scores affect both how much and what loan terms (interest rate, etc.) lenders will offer you at any given time. Taking steps to improve your FICO scores can help you qualify for better rates from lenders.

For your three FICO scores to be calculated; each of your three credit reports must contain at least one account, which has been open for at least six months. In addition, each report must contain at least one account that has been updated in the past six months. This ensures that there is enough information – and enough recent information – in your report on which to base a FICO score on each report.

## About FICO scores

Credit bureau scores are often called “FICO scores” because most credit bureau scores used in the U.S. are produced from software developed by Fair Isaac and Company. FICO scores are provided to lenders by the major credit reporting agencies.



FICO scores provide the best guide to future risk based solely on credit report data. The higher the credit score, the lower the risk. But no score says whether a specific individual will be a “good” or “bad” customer. And while many lenders use FICO scores to help them make lending decisions, each lender has its own strategy, including the level of risk it finds acceptable for a given credit product. There is no single “cutoff score” used by all lenders and there are many additional factors that lenders use to determine your actual interest rates.

## Other Names for FICO Scores

FICO scores have different names at each of the credit reporting agencies. All of these scores, however, are developed using the same methods by Fair Isaac, and have been rigorously tested to ensure they provide the most accurate picture of credit risk possible using credit report data.

<b>Credit Reporting Agency (CRA)</b>	<b>FICO Score</b>
Equifax	BEACON® Score
Experian	Experian/Fair Isaac Risk Model
TransUnion	EMPIRICA®

## More than one credit score

In general, when people talk about "your score", they're talking about your current FICO score. However, there is no one credit score used to make decisions about you. This is true because:

### **Credit bureau scores are not the only scores used.**

Many lenders use their own credit scores, which often will include the FICO score as well as other information about you.

- **FICO scores are not the only credit bureau scores.**  
There are other credit bureau scores, although FICO scores are by far the most commonly used. Other credit bureau scores may evaluate your credit report differently than FICO scores, and in some cases a higher score may mean more risk, not less risk as with FICO scores.
- **Your credit score may be different at each of the main credit reporting agencies.**  
The FICO score from each credit reporting agency considers only the data in your credit report at that agency. If your current scores from the credit reporting agencies are different, it's probably because the information those agencies have on you differs.
- **Your FICO score changes over time.**  
As your data changes at the credit-reporting agency, so will any new credit score based on your credit report. So your FICO score from a month ago is probably not the same score a lender would get from the credit-reporting agency today.

## 3 Big Filing Cabinets—The Credit Bureaus

Most people think that credit bureaus are branches of the government. In actuality, credit bureaus are for-profit corporations that provide a service: storing and maintaining credit records. The three major bureaus, or Credit Reporting Agencies, (CRAs) are:

- Experian
- Equifax
- Trans Union

To report information to the credit bureaus, creditors must fill out an application and pay a fee to each bureau to which they wish to belong. Membership is completely voluntary. No creditor has to report anything to any bureau. The more “thrifty” creditors may expend the time, trouble, and money to report to only one credit bureau. Given the fact that each bureau has its own separate, private database and, because the credit bureaus generally don’t pass information back and forth to each other, you actually may have up to three divergent credit histories.

So who subscribes to the credit bureaus for their services? Banks, finance companies, department stores, taxing authorities, landlords, and other “credit grantors” all subscribe to the CRAs. Once a creditor subscribes to a CRA’s services, the creditor is allowed to report information on your account history. This information is stored by the CRA in a national database, and contains the following:

1. Your payment history
2. Where you work and your employment history
3. Your age
4. Whether or not you’ve been divorced
5. Your address history
6. In some cases, your salary

Credit bureaus also search public records for:

- Bankruptcy information from the federal government; and
- Judgment and tax lien information from courts (district, circuit, justice, municipal, superior, magistrate, probate, and state), town clerks, and registers of deeds.

Just how current is the public records information?

Once it receives information, that information is added to its database within 24 hours.

Records on tax liens, judgments, and bankruptcies are available nationwide.

## **Who Regulates the Credit Reporting Agencies (CRAs)?**

CRAs are governed by the U.S. Fair Credit Reporting Act (FCRA) of 1971. The FCRA was amended in 1997, and again in December 2003, and includes protections for consumers by increasing the responsibility of credit bureaus to investigate consumer disputes. The Federal Trade Commission, an organization responsible for enforcing federal credit laws, also governs credit bureaus.

You can obtain a copy of the Fair Credit Reporting Act by clicking on this link

<http://www.ftc.gov/os/statutes/fcra.pdf>.



## **SECTION 1: GET YOUR CREDIT REPORT**

### **Why Would You Want to Get Your Credit Report?**

Just like your body, to keep your credit as good as possible, you need to have annual check ups. Proactive sleuthing and repair of your credit history can save you a lot of headaches. If you know that you will be applying for a loan, employment, or an apartment, try to find out in advance which credit bureau your lender will be using. Then you can order just that one bureau's report, rather than buying all three of them, to see if your credit is attractive enough for a loan to be granted and to prevent unnecessary "inquiries" on your report.

You can obtain a copy of your credit report (for a small fee) by calling or writing to the credit bureau(s), or obtaining them online. Some states already have laws that require bureaus to provide one free credit report per year. In these instances, the bureaus supply the first report requested each year at no charge and charge you for additional reports or copies.

You can get your complete credit picture with all 3 FICO® scores and credit reports at myFICO®. Get your report from the company that delivers FICO® scores to 90% of the largest U.S. banks. It's generally cheaper to get your tri-merge credit reports from a company like this than to order each individual credit report from the 3 bureaus. It's generally easier to read as well.

To pull your credit from all three credit bureaus, you can click on this link:  
<http://www.myfico.com/Default2.aspx?AID=10537867&PID=2897569>

Requesting your credit report from each individual agency:

#### **Experian:**

P.O. Box 2002  
Allen, TX 75013  
Call 888-397-3742. Fax: 972-390-3809  
[www.experian.com](http://www.experian.com)

#### **Equifax:**

PO Box 105851  
Atlanta, GA 30348  
Call 888-397-3742. Fax: 972-390-3809  
[www.equifax.com](http://www.equifax.com)

**Trans Union:**

PO Box 1000

Chester, PA 19022

Call 800-888-4213. Fax: 714-447-603 or 714-830-2449

[www.transunion.com](http://www.transunion.com)

**Situations which entitle you to a free credit report**

If you are ever turned down for anything based (at least in part) on your credit report, the lender is required by law to tell you why you were turned down and give you the name and address of the credit bureau from which it pulled your credit information. This is true even if the credit report was only one factor in the decision. The same law instantly entitles you to receive a FREE copy of your credit report if you request it within 60 days after you were turned down. (It doesn't matter whether you have already received other free reports.)

Send a copy of your turndown letter to all three bureaus in question and ask for a free copy of your credit report. When you write to the credit bureau, state that you were denied credit, insurance, or employment based on your credit report from the bureau and that you are requesting a copy of it. Be specific about the name of the company denying you credit and the date on which it occurred. Hey, it's a \$27 value, so don't look a gift horse in the mouth.

In addition to being turned down for credit, you are entitled to a free credit report:

- If you were charged higher rates and fees or deposits based on a credit report issued by a credit bureau, you have the right to get a free copy from that bureau
- If you certify in writing that either you are unemployed and plan to seek employment in the next 60 days
- If you are on welfare
- If you write to say you were a victim of fraud
- If you have experienced a negative change in your credit limit Contact Information for the Three Bureaus

## **SECTION 2: ANALYZING YOUR CREDIT REPORT**

### **What Does All That Information Mean?**

As we saw in Section 1, your credit report contains a wealth of personal information about you: your name, address, Social Security number, and birth date. It also provides information about your open credit accounts, including balances and credit limits, whether or not you pay them on time, and whether any of them are or were turned over for collection. Any suits, judgments, or tax liens also are noted. It also may include the name of your employer and former employer, your position and income, your former address, and whether you rent or own your home. Your spouse's name, Social Security number, employer, and income also might be included. You should pay the extra, so you can also get your credit score.

When you first receive your credit report, you may be confused. The information on your report is coded in a way that is not immediately understandable by the layperson. Each credit report should arrive with a key that interprets the codes and indicators on the credit report. Study the credit report and the accompanying "decoder keys" until you understand what each number and code means. If it still looks like a foreign language to you, you could call the agency or company that issued the report, for example MyFICO offers booklets and reports on understanding credit reports and scores, along with other educational materials that are extremely helpful. The agency is required to explain it to you (but not to pay for any postage or phone bills you may incur). The following pages should help you figure out your report.

### **Each CRA Has Its Own Information and Layout.**

Please note that not all credit agencies will have the same information. This is because creditors do not necessarily report to the same agency and many do not report to all three major credit agencies. Therefore, to do a complete job, it is vital that you obtain credit reports from all three-credit agencies.

Once you have obtained all of your credit reports, carefully note any records that you believe to be inaccurate, incorrect, erroneous, misleading, or outdated. Don't assume that because one bureau doesn't have a record of a late payment that they all will not.

### **Those Ugly Blemishes on Your Credit Complexion**

If you have pulled your credit report expressly for the purpose of repairing your credit, you need to know how to identify all of the negative entries contained on the report. If a listing within your credit history contains one or more of the following indicators, it is considered a negative listing. If the listing contains none of these indicators, then the listing is positive.

### **Bankruptcies (BK)**

If you have had a bankruptcy, the credit report will list the date you filed your BK and the date it was closed. It also can list the amount of debt that was discharged in your BK.

### **Foreclosures/Repossessions**

A foreclosure and repossession is essentially the same thing: your creditor takes back property you used to secure a loan because you didn't pay on time. A foreclosure describes only loans secured by real estate. All other types of seized property due to the defaulting of secured loans are called repossessions.

### **Tax Liens**

If you owe state or federal taxes, these governmental agencies can put a lien on your home for the amount owed. Tax liens are public records, and they usually will find their way onto a credit report.

### **Judgments**

If you've ever had a judgment filed against you, it means that you have been sued in court and a monetary award was given to the person or entity that sued you. Judgments are public records and easily find their way into your credit files.

### **Profit and Loss Charge-Offs**

Profit and loss charge-offs are generally used only by credit card companies and usually are debts that a creditor considers uncollectible and does not bother to spend time or lawyer's fees to collect.

### **Collections**

If you have defaulted on a debt, your creditor most likely is first going to try collecting the money from you by using pressure tactics. After they give up on this approach, they hire professional hit, er ah, bill collectors—the collection agencies. Once your bill gets turned over to these oh-so-not-friendly people, your account is considered a collection account. Mortgage companies will also make you pay these items before the close of a loan. As with an original creditor and a charged-off account, collection agencies have the right to sue you over a collection account and win a judgment in court until the statute of limitations runs out, however unlikely they are to do so.

### **Late Pays**

You will be reported as "late" to the credit bureaus for being more than 30 days late on a payment. If you are 0 - 30 days late on a loan or credit payment, you are not considered late paying a bill. I once asked a friend of mine who was applying for a loan, "Have you ever been late paying your loans?" to which she replied "Oh, all the time!" After saying this, I could tell she was concerned at this point that she had terrible credit. Further inquiry into the subject led me to discover that occasionally she'd been as much as a week (oh, horrors!) late on her credit card bills. After a chuckle, I assured her that her credit was probably perfect (it was).

## **Inquiries**

Whenever you, or anyone else, request a copy of your credit report, the request is noted as an “inquiry” on your credit history. If you apply for lots of credit cards in a short time, this will produce a flurry of “inquiry” notes on your credit report, and will lower your credit score. The credit scoring models assume that a flurry of recent inquiries means you’ve applied for lots of credit, making you a greater credit risk, even though the inference is not strictly valid.

## **Child Support**

If you are delinquent in making your child support payments, it becomes public record and can show up on your credit report.

## **Specific Agency Indicators/Codes**

As noted, each bureau has its own way of formatting and laying out the information on the pages of its standard report. They all look completely different, as a matter of fact. Here are some clues on how to identify what’s BAD on a credit report:

### **Experian:**

- Any item marked with an asterisk;
- Any inquiry

### **Equifax:**

- Any item preceded by a “>>>>” icon;
- Any item listed as “repossession”, “foreclosure”, “profit and loss write off”, “charge off”, “paid profit and loss write off”, “paid charge off”, “settled”, “settled for less than full balance”, or “included in bankruptcy”;
- Any collection amount, whether paid or not;
- Any court account, including a lien, judgment, bankruptcy (Chapter 11, 7, or 13), divorce, satisfied lien, or satisfied judgment;
- Any item showing one or more 30-, 60-, or 90- day late payments in the column to the far right; and
- Any inquiry

### **TransUnion:**

- An account closed by the credit grantor and not you;
- Any item listed as “repossession”, “foreclosure”, “profit and loss write-off”, “charge-off”, “paid profit and loss write-off”, “paid charge off”, “settled”, “settled for less than full balance”, or “included in bankruptcy”;
- Any collection amount, whether paid or not;
- Any court account, including a lien, judgment, bankruptcy (Chapter 11, 7 or 13), divorce, satisfied lien, or satisfied judgment;
- Any item showing one or more 30-, 60-, or 90-day late payments in the column to the far right; and
- Any inquiry.

## How Long Do Negative Items Stay on Your Credit Report?

Accurate, negative information generally can be reported for seven years. Just like a broken heart, however, time heals all wounds. For example:

**Delinquencies:** Payments made from 30 to 180 days after the due dates are considered delinquent. A record of this delinquency will remain on your credit report for seven years from the date of the missed payment. This is true even if you later bring your payments up to date.

**Collection accounts:** If you fail to pay your bill for three to six months, the credit grantor may decide to turn the account over to a collection agency. These collection accounts remain on your credit report seven years from the date of the initial missed payment that led to the collection. When a collection account is paid in full, it will be marked "paid collection" on the credit report. It's important to remember that the collection account will remain on your report even if you later pay the account in full.

**Charge-offs:** These accounts remain on your credit report for seven years from the date of the initial missed payment that led to the charge-off, even if payments are later made on the charged-off account.

**Closed accounts:** Accounts no longer available for further use are considered closed. They may or may not have a zero balance. Closed accounts without a balance will remain on your credit report for seven years from the date they were reported closed, whether closed by the creditor or by you. Closed accounts with a balance will remain on your credit report for seven years after you make your final payment.

**Lost credit cards:** When you report a lost credit card, the credit grantor will close your account. If there are no delinquencies, the account will continue to appear on your credit report for two years from the date the card was reported lost. If there were delinquencies before the card was lost, the account will continue to appear on your credit report for seven years from the delinquency.

**Bankruptcies:** Chapters 7, 11, and 12 remain on your credit report for 10 years from the filing date. Chapter 13 remains seven years from the filing date. Accounts included in the bankruptcy will remain seven years from the date they were reported as included in the bankruptcy. These time frames apply even if the bankruptcy was dismissed or satisfied.

**Child support judgments:** These remain on your credit report seven years from the date the judgment was filed. **Civil and small claim judgments:** These remain on your credit report seven years from the date the judgment was filed. **City, county, state, and federal tax liens:** These remain on your credit report seven years from the filing date of the lien.

**Inquiries:** All inquiries remain on your credit report a minimum of one year from the date the inquiry was made.

**Important Note:** As indicated above, the length of time a negative mark can stay on your credit report starts from the time you were late or the late payment went into collection, not from the last time you made a payment on the account. Some collection agencies update their reporting status on you to keep the account active with the bureaus, to extend the time the account appears on your report. Very crafty and underhanded of them because most often the account is updated and the period of time the account was negative appears to be moved up. Challenge this with the CRAs.

In other words, paying a collection will not keep it on your credit report for a longer period of time.

## **What is a Credit Score?**

Imagine that you are walking down the beach in your bathing suit. Okay, imagine someone else and a crowd is watching. The crowd holds up signs that read “10” or “6.5”, depending on how attractive the person in the bathing suit is to them. Crass? Unfair? Subjective?

In the credit game, the crowd judging you is a company called “Fair Isaac” and the numbers range from 375-900. This is your credit score-your FICO score-which heavily determines your credit attractiveness to a large number of people (i.e., banks, insurance companies, loan companies).

It’s unnerving enough just knowing you’re being judged on *anything*. But how about being judged on things you have little control over, or not even knowing the criteria upon which you are being judged? It’s like wearing a blue bikini and heels and not knowing that you should be wearing a red bikini and flip-flops to score higher.

This is not an exaggeration. For the longest time, no one knew the criteria for credit scoring. Only after enormous public and government pressure, consumers are now allowed to get their credit scores, although the formula used to calculate your score is still as mysterious as the recipe for love.

Your credit score is derived from information accumulated in a credit bureau that issues your credit report. Your score is based on the number of credit accounts you have, your payment history, and your personal information, and is derived from a calculation so complex that there is no exact formula to print. But it is a statistical yardstick projecting whether or not you will default on future credit. Fair Isaac developed this statistical model (used by all three credit bureaus and most banking institutions), but will not reveal the exact recipe for the model. The company maintains that its model is a proprietary system, and keeping it a secret ensures its continued existence. If it gave away the product, how would Fair Isaac make money? What most people don’t realize is that this credit scoring model is a product sold to lending institutions and, of course, credit bureaus.

This scoring model did not start out to be the industry standard, but since it was the most complete model available when the banking industry was interested in such information, it became an integral part of the credit granting process. The model took years to develop, and Fair Isaac has all kinds of empirical data to back up its accuracy. The lending industry considers this model to be fair and accurate. Since almost everyone uses it, it implies that the same yardstick measures everyone. Many (if not most) American and Canadian consumers are at the mercy of this statistical model.

At the credit scoring conference held by the FTC in July 1999, Fair Isaac gave the opening presentation and talked about some of the things used in calculating consumer credit scores. What I found out was that a lot of what goes into the score calculation is beyond the control of the consumer.

### What Exactly Factors into Your Credit Score?

Below is a list of the factors used to score you, listed in order of importance. (Information marked with an asterisk [\*] is obtained from information that you provided on an application and is not considered in a credit bureau score.)

- Major derogatory items on your report (i.e., bankruptcy, collections, foreclosure, slow-pays)
- Time at present job
- Occupation (professionals are given heavy weight)\*
- Time at present address
- Ratio of balances to available credit lines (the lower the better)
- Whether or not you own your home (if you do, this is heavily weighted)\*
- Number of recent inquiries
- Age (50+ is the best)
- Number of credit lines on your report
- The number of years you have had credit in the credit bureau database

Here are examples of some of the numbers used to calculate your credit score— these are not the actual numbers, but representative numbers to show you the weight of the various factors. In actuality, you receive a score on your credit report in addition to a score from your lender, the formulas of which both come from Fair Isaac.

TABLE 1—NUMERICAL FACTORS OF YOUR CREDIT SCORE

Consumer Trait	Consumer Status	Points +/-
Own/Rent:	Own	25
	Rent	15
	Other	10
	No info	17
Yrs. At Current Address:	<.5 years	12



<b>Consumer Trait</b>	<b>Consumer Status</b>	<b>Points +/-</b>
	.5-2.49 years	10
	2.5-6.49 years	15
	6.5-10 years	19
	>10.49 years	23
	No info	13
<b>Occupation:</b>	Professional	50
	Semi-professional	44
	Manager	31
	Office	28
	Blue Collar	25
	Retired	31
	Other	22
	No info	27
<b>Years at Job:</b>	<.5 years	2
	.5-1.49 years	8
	1.5-2.49 years	19
	2.5-5.49 years	25
	5.5-12.49 years	30
	>12.5 years	39
	Retired	43
	No info	20
<b>Department Store/Major Credit Cards:</b>	None	0
	Department Store	11
	Major Credit Card	16
	Both	27
	No Answer	10
	No info	12
<b>Bank Reference:*</b>	Checking	5
	Savings	10
	Both	20
	Other	11
	No info	9
<b>Debt Ratios:**</b>	<15%	22
	15-25%	15
	26-35%	12
	36-49%	5
	>50%	0
	No info	13

<b>Consumer Trait</b>	<b>Consumer Status</b>	<b>Points +/-</b>
Number of Inquiries:	0	3
	1	11
	2	3
	3-4	-7
	5-9	-20
	No record	0
Years in File:***	<1 year	0
	1-2 years	5
	3-4 years	15
	5-7 years	30
	>8 years	40
Number of Revolving Lines of Credit:	0	5
	1-2	12
	3-5	8
	>6	-4
Percentage of Balances Available:****	0-15%	15
	16-30%	5
	31-40%	-3
	41-50%	-10
	>50%	-18
Derogatory Credit:	No record	0
	Any Derogatory Credit	-29
	Any slow payment	-14
	One Satisfactory line of credit	17
	Two Satisfactory lines of credit	24
	Three Satisfactory lines of credit	29

### *Explanation of Terms*

#### **BANK REFERENCE\***

By this, they mean whether or not you have a savings and/or checking account. The only way that the Fair Isaac model would know your banking information is from the information you provided in filling out an application.

#### **DEBT RATIOS\*\***

Your debt ratio is the ratio of your monthly credit obligations (i.e., credit cards, mortgages, car loans—not food, insurance, or utilities) over your monthly gross (before taxes) income. For example, if your monthly credit obligations total

\$1,000/month and your monthly gross income is \$4,000/month, your debt ratio would be 25%. How would the Fair Isaac model know about your income? You must have provided it when you filled out an application.

### **YEARS IN FILE\*\*\***

This is the number of years that you have been in the credit bureau's files and, theoretically, the same amount of time you have had credit (though, of course, not necessarily).

### **PERCENTAGE OF BALANCES AVAILABLE\*\*\*\***

This refers to the amount of available credit you have left on revolving credit (like credit cards). It is calculated by dividing your "total credit used" (over all of your cards) by the "total credit limits" (over all of your cards). For example, if you have a total credit card limit of \$10,000 and you have used \$2,000 worth of this available credit, you have used 20% of your available credit. Your balance available is 80%.

### **Profile of a High-scoring Consumer**

According to the above scoring model, to get the highest score, you would have to (get ready for this):

- Be at your job for a long time
- Be in a "professional" occupation (like lawyer, doctor, banker, corporate officer, etc.—does webmaster count?)
- Have lived in the same home (that you own, of course) for over 10 years
- Have had credit and loans for many years
- Be at least 50 years old
- Have almost no debt, and not have applied for any new loans for the last two years
- Have no derogatory credit

So is this fair? Have you noticed how few of the above items are entirely within your control?

## **SECTION 3: How to Build Credit if You Don't Have Any**

### **No credit is the same as bad credit**

As I mentioned earlier, creditors regard a lack of credit history to be the same as a poor credit history, especially if you are not a young person. Why? Creditors want to see a history of how you handle debts. If there is no information upon which to judge you, you are deemed a risk. Not fair, but true.

Ironically, if you are a college student (even though you may not have a job), the creditors may be falling all over themselves to offer you credit because it is reasonable to expect that you haven't had time to build a credit history—just like having no dating history because you are still too young to date. Creditors want to hook you while you're in your formative years. It's true. If you are over 25, though, creditors are asking themselves: Why hasn't this person gotten credit? It's like the 50 year old who has never been married—people wonder what gives.

### **Situations Ripe for Building Credit**

You go to the gym to build up your body and you feel sexier. You like the way you look in the mirror, and you develop a certain confident swagger. People of the opposite sex find you more appealing. It's the same with creditors—they love to see the power of your “credit muscles”(your repayment history). But, sometimes, as in the following instances, you have not yet built your credit muscles:

- You're young and haven't used any credit yet
- Your old credit card spending habits got you into a lot of trouble and you cut up all your cards years ago. To avoid repeating your past mistakes, you pay for everything in cash and, consequently, your credit report is completely empty
- You think that debt is bad and have always paid for everything with cash
- Many people think—erroneously—that being debt-free is a positive trait valued by lenders
- You're just out of bankruptcy and you need to take those baby steps to rebuild your credit

A certain amount of forgiveness is granted in these situations, but not forever. There must be some evidence of credit building. If you're a ninety-pound weakling all your life—credit wise—you'll have difficulty attracting that special someone willing to trust you with a loan.

### **Before You Apply Yourself...**

When you want to look your very best, what do you do? You work out, start taking showers every day, even cleaning behind your ears and pulling up your socks, right? A

little cologne, combing the hair. You don't leave the house until you have primped at least a little bit. Equally, you must first prep your credit report before using it to attract creditors.

Now I'm not talking about handing in a credit application laced with Old Spice, or sealed with a big pucker of lipstick; I'm talking about looking at your credit report just like you'd have a look in the mirror before stepping out of the house. Even if you have never gotten a credit card or a loan, it doesn't mean that your credit report may not have mistakes on it. Someone else's credit may have been placed erroneously on your credit report, for example. You must make sure that your credit report is as attractive as you can get it. Begin by obtaining a copy of your credit report and examining it thoroughly.

Follow the guidelines in Section 2 for analyzing your credit report and Section \_\_\_\_ for getting rid of blemishes (errors or derogatory marks), then use Section \_\_\_\_ to lose that credit "spare tire" (excessive inquiries). Having your report in tip-top shape will help you immensely when you apply for new credit. Once your report looks almost as good as new, it is time to start adding positive credit.

Keep in mind, however, that building or re-building a credit report is not a quick-fix situation. It generally takes a year or two to complete. Don't fall for promises of a "glowing report in a matter of weeks" from so-called credit repair agencies. It just doesn't happen that way any more than you can flatten your stomach overnight. There are, however, a few things you can do to jumpstart the process.

## **Four Ways to Add Positive Credit to Your Credit Report**

### **1. PIGGYBACK ON A FRIEND**

If you know someone (a friend or parent) who has good credit, you can "borrow" that person's good credit listings. This friend must have credit card(s) and must trust you enough to allow you to become a "co-signer" on his card(s). Have your friend call the credit card company and request that you be placed on his card as co-signer. A copy of the card will be sent to you, but you never have to use it. (You can simply return it to your friend.) Your credit file should soon show an open account with all of the positive history that your friend has created over the years from that credit card. Remember, however, that when a new credit grantor reviews your file, he may insist that the balance on the card appear on your debt-to-income ratio balance sheet. So make certain that your friend doesn't have excessive debt, although this shouldn't disqualify you for credit if your income is sufficient and you don't have an excess of debt on your file.

### **2. GET A SECURED CREDIT CARD**

Ask your local bank if it offers secured cards. Many national banks are starting to offer this service. Your past credit is less important when applying for a secured card, as you will be depositing funds into the bank to secure the credit line on the card. You can get this card even if you still have bad credit on your credit file. By putting \$500 into a

savings account, you will be allowed to charge up to \$500 on the card. Some banks may give you a credit line that is two to three times the amount of your secured deposit.

Make sure that any credit card you get is not listed as a secured card to the credit bureaus, and that it also lists your credit limit. If your card does not have these characteristics, you could actually be damaging your credit by getting one.

### 3. SEEK EASY CREDIT

Many stores extend credit without tremendous regard for the credit standing of the applicant. These stores usually can be found in industries with small products or traditionally high mark-ups. Here is a list of creditors who often will extend credit to those without much credit history:

- Jewelry stores;
- Furniture stores;
- Tire stores;
- Appliance stores;
- Gas companies;
- Easy credit auto dealerships; and
- Credit Unions

Make sure that these companies report to the credit bureaus, as not all of them do.

### 4. KEEP YOUR ACCOUNTS ACTIVE

Once you've successfully received new lines of credit, it is important to have activity on them each month. I don't suggest that you pile up large debt—maybe maintain a balance of \$50 dollars or so. Pay the minimum when the bill arrives even though it will cost you a little in interest charges. **And pay it on time.** This is what future loan officers and other creditors want to see. (Inactive accounts with a zero balance aren't displaying a tendency to handle existing debts.)

**You need to display at least one year of positive credit habits to be taken seriously, especially by a mortgage company. Start now, or you will always be a year or two from a good credit standing.**

### **Credit Lines That Won't Help**

There are certain forms of "debt" that won't help you build or re-establish your credit. These include:

**Private loans from a relative or friend.** Private individuals are not qualified to report to the credit bureaus.

**Loans for cars from small car lots.** If you are buying a car, your loan should be through a banking institution so that your timely payments will be reported. If you pay cash monthly to an office or individual, it will never be reported to the bureaus.

**Rent.** Most apartment rental agencies do not have the time or money to report payments. However, recently due to the excess amount of lease option properties nationwide, it has become more prevalent in the land lording business to help tenants become buyers.

**Utility payments.** Utility payments generally are not reported to the credit bureaus and are basically useless as a form of credit. Recently, however, they have started reporting to credit bureaus in certain areas of the country.

## **SECTION 4: Things You Can Do To Improve Your FICO Score**

### **Things You Can Do to Improve Your FICO Score**

Keep in mind that changes in your FICO score take a long time to occur. But if you live by the following guidelines, your credit score will improve over time.

- Review your credit reports regularly for errors. You must check all three bureaus (Experian, TransUnion, and Equifax) to ensure that you will receive a fair evaluation the next time you apply for credit. Check a minimum of once a year, preferably every six months.
- Pay your bills on time. It seems almost too obvious, doesn't it? But hey, it works. Make sure you never pay a bill 28 days late or later. If you're cutting it close, make sure to count mail time when you send your bills.
- Pay down and close unneeded accounts. Over time, you should pay your higher interest accounts off then close them. An account that has been taken up to a high balance, brought down, and then closed is a good FICO builder. But don't close them all. You need at least three accounts open.
- On the flip side of this, don't apply for too much credit at the same time. A sure sign of desperation is someone who has applied for eight credit cards in the last 30 days.
- Don't allow prospective creditors to pull your credit report unless it is absolutely necessary.
- Keep all credit card balances low. If you carry a balance at all, make sure that you don't exceed one half (although 30% or less of the balance is optimal) of the credit card's limit. High credit balances can hurt even the most meticulous on-time bill payers.
- Delete negative credit listings, if possible.
- Delete inquiries, if possible.
- Pay down your credit card debt. Take money from an outside source, such as savings, a personal loan, or other credit cards, and apply that money to credit cards that are at or near their limit.
- Settle collections, judgments, or outstanding debts.



Okay, it's time to get out that bathing suit and try walking by Fair Isaac again!

### **The Use of Your Credit Score to Predict Other Kinds of Behavior**

Currently, other organizations are using credit scoring for non-credit measures. In a large number of cases, the use of credit scoring has nothing to do with the extension of credit. Your score also is used by insurance companies, employers, apartment managers, utility companies, junk mail solicitors, and others for reasons that have nothing to do with credit.

Most people would agree that a person's driving record and credit history are unrelated. Still, an increasing number of automobile insurers are using credit scores in the underwriting process. Insurance companies that use credit scoring often view the consumer's driving history as less important than his credit score. Exceptions are often made for consumers with one too many moving violations if they have high credit scores. Exceptions are never made for consumers with clean driving histories and low credit scores. There are an increasing number of cases in which people who have been with the same insurance company for years have had their premiums increased, or their policies not renewed, because of their credit scores.

## **SECTION 5: Credit Card Types**

### **Which Card Should You Get?**

With so many different cards advertised via every possible medium, and with all those \*!@%& unsolicited *personal* credit card applications choking your mailbox, narrowing down your options may be a bit overwhelming. Should you get as many cards as you can so you can impress your friends, and that special someone, with your stack of plastic? Absolutely not! The more cards you have, the fatter your wallet is and the more cards you have to keep track of. If you have lots of cards, there is a good possibility that you can get yourself into trouble by running up lots of debt. As we saw in the last chapter, having too many cards lowers your credit score, even if most of your cards show a low or zero balance.

Some cards claim to be accepted “everywhere you want to be,” while others smugly suggest that they could be the patron saint for your “priceless” memories. That’s just great, really, but what exactly is the difference between one card and the next? They can’t all be the same, right? Absolutely right!

### **Basic Credit Card Types**

The three basic credit card types are: bank cards, travel and entertainment (T&E) cards, and house cards. Automatic Teller Machine (ATM) cards and debit cards are linked to your existing bank accounts (checking and/or savings) and should not be confused with credit cards.

The best card for you is the one that is accepted where you shop and charges you the least amount of money for the services you actually use. For example, if you always pay off your balance each month, it is important to get a card with a grace period; the interest rate doesn’t matter much.

### **Bank Cards**

Bankcards are issued by, you guessed it, banks. Visa, MasterCard, and Discover are the most popular and widely accepted types of bankcards. Bankcard rates are set independently by the banks issuing them, so don’t make the mistake of thinking that all Visas or all MasterCard’s are alike. In fact, a given bank may offer several different rates and fee schedules on its bankcard. Sometimes you can pick which one you want; other times, the bank will offer you a single set of terms with no option, even though it offers another customer a different set of terms. That’s why it’s worth shopping around rather than just applying for “a MasterCard” or “a Visa.” In addition to having to choose between banks to get the best rates, within the bank card category lies several credit card subcategories from which to choose: affinity cards, secured cards, and unsecured cards.

## **AFFINITY CARDS**

An affinity card typically is a Visa or a MasterCard that carries the logo of an organization (such as Harley Davidson., Yahoo!., Disney., etc.) in addition to the emblem of the card. You basically are getting a card with someone's logo on it. The organization solicits all of its members to get cards, with the idea of keeping its name in front of the card users and, hopefully, keeping card users loyal to it for future purchases, membership, and/or donations. There are some credit card companies that even offer a "design your own" card service, I guess so you can put the object of your affection on your credit card. (Wouldn't that impress him—talk about affinity!) If you've recently donated to any nonprofit organizations, belong to any clubs or fraternities, or if you're a university alumni, you've probably received applications for affinity cards.

Evaluate an affinity card as you would any other. If you would consider it a good deal in the open market, based on the way you use credit, then it's a good deal. Card users typically receive some benefit by using an affinity card (i.e., frequent flyer miles or points toward merchandise in a catalog). In addition to establishing loyalty, the organization receives a financial incentive (a fraction of the annual fee or the finance charge, some small amount per transaction, or a combination of the two) from the credit card company. But an expensive card doesn't become a good deal for you merely because a small fraction of the profits are turned back to your organization or a charity. Most of the profits go to the card issuer (the bank), and through the affiliated organization, the credit card company gets more of its cards into customers' hands. Unless the card is a good deal for you personally, it's a better idea to make a direct donation to your organization (and get a tax deduction, too, if it's a charity).

## **SECURED CARDS**

Secured cards require you to make a bank deposit up front as security against charges on the card. The limit on the card usually is set by the amount of the deposit. Typically, the contract is written in such a way that the issuing bank maintains the right to take money from your "security" deposit if you don't pay your bill. Secured cards usually are sold to people who have credit problems and can't get a regular "unsecured" card but still need credit. But a secured card from a bank may be a good deal for anyone. You may want a secured card even if you can get an unsecured card. Why? Since a secured card represents less risk to the bank, interest rates may be lower than for an unsecured card. A secured MasterCard or Visa looks just like a regular one and the law ensures that it has all the same consumer protections.

When evaluating a secured card, use the same criteria as for any other card, and ask the bank some additional questions such as:

- What interest rate is paid on the deposit?
- Is there an annual fee?

- If I maintain a good credit record, will I be considered for an unsecured (“regular”) card?
- Binding arbitration. If you sign something, which agrees to settle all disputes with binding arbitration, you are basically waiving your right to have your day in court. Many credit card companies have taken unfair advantage of their customers by insisting on this practice.

Also, ask yourself if you might conceivably have a need for the deposited funds during the required term. If so, find out up front whether you can withdraw the deposit in case of financial emergency, and what it costs in interest and penalties to do that.

Call your own bank or check online for information about secured card offers. With all of the great information out there, you should be able to find lots o’ good stuff and even apply on the spot! The Internet is an excellent source for finding the credit card to meet your needs.

## **UNSECURED CARDS**

You probably won’t hear the term “unsecured card” often because, in terms of credit cards, these are the norm. “Unsecured” means that the bank can’t take specific assets of yours in the event that you don’t pay your bill, but rather would have to sue you or force you into bankruptcy to collect. A “regular” card is unsecured.

### **Travel and Entertainment (T&E) Cards**

American Express (AMEX), Diners Club, and their kin originally were aimed at the more upscale “travel and entertainment” market. They are accepted at many places, though not as many locations as Visa and MasterCard. Some places don’t take MasterCard and Visa but do take AMEX or Diners Club.

Unlike bankcards, rates on T&E cards do not vary. One AMEX green card is like all other AMEX green cards in the country (although corporate AMEX card rates may vary from personal card rates).

### **House Cards**

House cards are good only at the stores of one chain. Sears is the biggest one, followed by the oil companies, the phone companies, and your local department stores. Like T&E cards, national house cards (like Sears) have the same terms and conditions wherever you apply.

## **ATM Cards and Debit Cards**

### **ATM CARDS**

An ATM Card is used to withdraw (or deposit) funds from your bank account by punching in your code number (PIN—personal identification number) at a cash machine. An ATM card looks nothing like a credit card and has no Visa or MasterCard logo on it.

## **DEBIT CARDS**

A debit card looks very much like a credit card (with Visa or MasterCard logos), and is treated like a credit card by most merchants, but the charge is immediately deducted from your bank account. Therefore, as its name implies, a debit card is not a credit card. Instead of running up a bill that you pay at the end of the month, the debit card runs down your bank account the moment the sale is made.

Merchants like these because they get instant payment without worrying about bad checks. Some consumers prefer them because they can only spend the money that is available in their accounts, avoiding the temptation to overspend on credit.

Debit cards are convenient but they do have drawbacks. It is a lot more painful to resolve a problem with a purchase if the money is gone from your account (as with a debit card) than if it's just numbers on a piece of paper (as with a credit card). But you can protect yourself by signing for your debit card purchases just as you do your credit card purchases. How?

After swiping your debit card, simply select “credit” on the PIN pad instead of “debit.” The charge will still be debited from your checking account on the spot. But by choosing “credit,” the charge gets processed through the Visa processing network, activating Visa’s Zero Liability policy. The merchant will ask you to sign for the purchase instead of inputting your pin on the PIN pad.

When you choose “debit” and enter your pin number to complete a purchase, your liability is limited to \$50 (as opposed to \$0 when you choose “credit”) but only if you notify the card issuer within two business days of the loss or theft of your debit card.

Be very careful with your debit card. If you lose it, your entire account can be emptied very quickly. Most banks limit the amount of cash that can be withdrawn in a single day to around \$300, but the only limit to the amount of shopping a thief can do in a day is determined by the amount of money in your account. Report lost or stolen debit cards immediately and never write your PIN number where a thief can find it.

Consumers in the know don’t like debit cards because they offer less protection than credit cards in the event of a billing dispute.

Note: Some banks now issue combined ATM/debit cards. Depending on your viewpoint, this gives you the advantages—or the disadvantages—of both.

A list of the best credit card deals can be found at <http://www.bankrate.com/cic>. This site truly is impressive in its in-depth evaluation of credit cards—secured and unsecured.

## **SECTION 6: Good And Bad Deals In Credit Cards**

### **Factors to Consider**

There are three principal features to the card itself that determine whether or not you've found a good deal. These are the Interest Rate, Annual Fee, and Grace Period. By law, all three must be disclosed at the time you apply for the credit card. The United States Fair Credit and Charge Card Disclosure Act requires issuers of charge or credit cards (including retail stores) to reveal certain basic information in tabular form with the application or "pre-approved" solicitation. Disclosures also must be provided before annual renewal if the card issuer imposes an annual fee.

Other things to consider are Rebates, Discounts, and Miscellaneous Fees. Also important is the pattern of your shopping—a card that your favorite merchants don't honor won't be of much use for you.

### **Interest Rates**

The interest rate is the rate charged on purchases and cash advances (generally, two different rates). It can be "fixed" or "floating." Fixed rates are not truly fixed because the banks will change them every year or so. Floating rates typically are a bit lower than fixed rates, but fluctuate every month according to the latest T-bill sale, the phase of the moon, or some other index (just kidding about the phase of the moon—sort of). By law, banks must apply floating interest rates according to a regulated index. Still, if you buy something you're expecting to pay off over many months, a floating interest rate will make it hard to guess how much finance charge you'll be paying. Some credit cards may refer to a "variable rate," which is the same as a floating rate.

### **ANNUAL PERCENTAGE RATE (APR)**

Years ago, credit card issuers would quote an interest rate that was not directly comparable with other lenders' rates because the method of computation was not standard. The law now requires lenders to quote an annual percentage rate so that you might compare cards—a rate that includes the interest and all fees for a year (i.e., the total cost of the "loan" for the course of a year).

### **MAXIMUM INTEREST RATES**

Interest rates are all over the map. There are limits, however, in most states on the maximum interest rates allowed. The laws concerning maximum interest rates are called "usury laws."

### **INTEREST RATE CALCULATIONS**

To calculate the interest on your card each month, the lender multiplies the card's interest rate (the APR) times your card balance. This will give the interest for the entire year. The

lender then will divide the interest calculated by the number of months in the year (12). The sticky part is determining the credit card balance. This is why it's important to choose a card with a grace period (see below). If you do have a balance on your card, there are three methods of calculating it:

- **Average Daily Balance** (the most common method): The issuer calculates the balance by taking the amount of debt you had in your account each day during the period covered by the billing statement and averaging it.
- **Previous Balance**: The issuer uses the balance outstanding at the end of the previous period—that is, the period prior to the one covered by the current billing statement.
- **Adjusted Balance Method**: The balance is derived by subtracting the payments you've made from the previous balance.

### **Annual Fees**

The annual fee is, well, a fee that the card issuer bills to your account annually. Every year, on the anniversary of the date your account was opened, the fee for the upcoming year is billed to your account. Typical charges are \$18 to \$29 for regular bank cards (about \$40 for gold bank cards) and anywhere from \$35 on up for various flavors of T&E cards. House cards are typically free.

Many lenders waive the fee the first year to get you to sign up, and then depend on you to forget a year later that you'll be charged an annual renewal fee. There's nothing shady about this as long as it's disclosed up front. Some lenders often have "secret" programs in effect where, if you ask them, they will waive the annual fee. Some do it only if you charge a certain amount per year; others have other criteria. It certainly can't hurt to call just before renewal time and ask to have the fee waived. (If you wait until after the fee is already on your statement, your chances aren't so good for getting it waived.)

Some banks will waive the annual fee if you tell them that you'll go elsewhere if you have to pay it. Others will not. You may want to ask (politely) to talk to a supervisor, since the front-line person may not care whether you cancel your card and may not have the authority to make concessions. Don't bluff on this unless you are confident you can get a card elsewhere.

### **Grace Periods**

The grace period is the time after the billing date that you have to pay off the bill without paying a finance charge. Grace periods for cash advances are pretty rare, since the bank would lose money on them. T&E cards typically have generous grace periods; bank cards usually have 25 days, but a few have 30, and many have no grace period. In every case, the grace period runs from the date printed on the bill, not from the date you get the bill. For instance, suppose your bill is prepared on the 28th of every month and the grace period is 25 days. If you make a purchase on July 3, it will show up on the July 28 bill and you'll have until August 22 (July 28 plus 25 days) to pay it off without interest. If

you don't pay the full balance, your August bill will show a finance charge, and so will every bill after that until you pay off your full balance.

Some banks give you a grace period only during those months when your previous balance is zero. Others (fewer of them all the time) give the stated grace period on all new purchases even if you have a balance from last month. The second method can save you big bucks; be sure to find out how your bank does it when you apply for the card.

### **Rebates, Discounts, and Other Kickbacks**

Some cards, such as Discover, pay "rebates." Rebates are a percentage refund on your purchases, either by check or by a credit to your account. Discounts, on the other hand, actually reduce the price on the bill before you pay it. Discover offers rebates on all purchases. The Ameritech Complete MasterCard gives 10% rebates on credit card calls at the end of the year. Some things to keep in mind when looking for cards with rebates are:

- When will the rebate be issued? At the end of the month or at the end of the year? Typically, it's after the end of the year.
- How is the rebate calculated? Be sure to read the fine print. For example, let's say that Discover advertises "up to 1% rebate." That's true, but the fine print reveals that you get back 1% for every dollar you charge after charging \$3,000 in a single year. The first \$3,000 is rebated at rates between one-quarter and three-quarters of a percent.

Some cards offer other features like frequent-flyer miles and extended warranties on purchases. Is this a good thing? It may or may not be. Consider such questions as these to help you make this determination:

- Does the airline fly to places you really want to go?
- How many dollars must you charge to earn a free ticket? Is the airline likely to be around by then?
- Are you likely to spend more than you otherwise would, just to accumulate the miles?

### **Miscellaneous Fees**

You have the right by law to know about all possible fees before your credit card application is processed.

### **APPLICATION FEES**

Application fees are extremely rare with unsecured cards, but with secured cards they are very common. Though such fees are legal, look long and hard at the terms before you agree to pay an application fee, even if you are "guaranteed" acceptance. For an unsecured card, you can almost certainly do better elsewhere.



## **OVER-LIMIT FEES**

Many cards assess an over-limit fee if you charge something that takes you over your credit limit. The creditor may or may not allow the charge if it assesses this fee. Common over-limit fees range from \$20 to \$29.

## **LATE PAYMENT FEES**

Some cards charge a late payment fee in addition to the finance charges. Again, a fee of \$20 to \$29 is common.

## **CASH ADVANCE TRANSACTION FEE**

Some cards charge a transaction fee for cash advances. This may be a flat amount (around \$2), a percentage of the transaction dollar amount (1% to 2% is common), or a combination. These fees are in addition to the stated interest rate, which usually starts accruing as soon as you get the money.

## **Tips for Cutting Your Credit Card Expenses**

### **1. PICK A CARD WITHOUT AN ANNUAL FEE**

Some credit card companies can charge you as much as \$50 a year. With all the choices out there, don't fall into this trap.

### **2. NEVER MAKE ONLY THE MINIMUM PAYMENT**

Credit card companies make the majority of their money from you through interest on the unpaid balances on your credit cards. The minimum payment some credit cards ask you to make will not reduce the balance on your credit cards very quickly, if at all. For example, consider a \$1,000 balance at 18% (a low rate by some cards issued today). If you make the minimum payment on the card (typically about 3% of the balance), it will take you six years and one month to pay off the balance, including an additional \$559 in interest. That is, if you never purchase another thing with this credit card until after the balance is paid off.

### **3. PAY OFF THE DEBT TO 30% OF THE CREDIT LIMIT**

If you must carry a balance, always keep it to 30% of the credit balance or below. Remember the banks want to make money on your interest and believe it or not, if you pay off your credit cards in full each and every month, they don't make any money. They don't report paid off balances as highly as they do low balances. It's crazy but true!

### **4. PAY ON TIME**

Mail your payment check early. Late credit card payments hurt you three ways:

- (1) Bad credit reports, which you already know about;
- (2) Late fees ranging from about \$20 to \$29; and

(3) Bumped up interest rates—as few as one or two late payments during one year can put you into the penalty box (causing your interest rate to jump to a “penalty rate” of 24% or more). Make sure you send in your payment a little extra early – some companies are known to be “slow” about getting your payment from their mail room to the processing center, which can result in a late fee, even if the payment itself was received on time. Try to allow one week for your payment to arrive. Or better yet, pay them online. If you pay them online, you can pay them the exact day they are due and don’t have to worry about the bill getting lost in the mail. Or you can do online bill payment through your bank.

#### **5. BE CONSCIENTIOUS OF CREDIT LINE INCREASES**

If you make timely payments, your bank will automatically raise your credit limit without asking you, and other banks will send you offers for more “pre-approved” cards. This could be good or bad. If you have a tendency to push the limits on your credit cards, they could entice you to go more into debt with this additional available credit. On the other hand, such credit line increases could give you a better debt-to-available-credit standing—but only if you keep the balances where they are —thus, actually increasing your credit score because you have all these high available credit amounts (which means you can be trusted) yet you keep low balances (which means you handle money well).

#### **6. AVOID CASH ADVANCES**

Don’t use your credit card like an ATM card for cash withdrawals. The interest rate on cash advances is at least 2% higher than on purchases and the interest begins to accrue immediately.

#### **Students Beware!**

College students are special to the credit card companies. For example, you could likely score plenty of credit cards (and potentially get yourself into deep trouble) even if you have no income. Why? Because you have the potential of earning a good income once you graduate.

Believe it or not, if you’re in college, credit card companies want your business so badly they’re offering much more than trinkets and soda. They’ll let you apply for credit cards without a job or income! You can apply for credit cards with a blank credit report, even without getting a co-signer! No other consumers can get cards this way. They want to get you hooked early.

## **SECTION 7: Act Quickly to Dispute Billing** **Errors and Overcharges**

When dealing with billing errors and overcharges on your credit card statements, you should first notify the credit card issuer. The issuer must receive your claim within 60 days of the billing date before it can start an investigation. Next, notify the merchant. Under the law, you must try “in good faith” to resolve the problem directly with the seller. The credit card issuer will not get involved at this point. However, it’s a good idea to start a parallel effort.

“In good faith” is not defined in the law, but in practice it means that you behave like a reasonable person. The merchant is expected to act reasonably, too. At a minimum, you should talk to the merchant’s customer service department and send a follow-up letter. You have to allow the merchant a reasonable time to respond. What’s reasonable? It depends on the circumstances, but usually is enough time for mail to go both ways, plus a couple of working days.

“In good faith” also means that you act promptly. Don’t wait three months after the charge shows up on your bill from that lingerie store to complain that you never got what you ordered.

Back orders are a frequent problem. If the merchant tells you the stuff is back ordered, you have the right to cancel the order. If it’s a mail order, the merchant is supposed to give you a postage-paid reply card indicating that the merchandise is on back order. Then you can tell the merchant you don’t want to wait and ask for the charge to be canceled. This may not happen the same day, but it should be reasonably prompt. Wait a few days and call the bank to see if the credit has come through yet.

Remember that the person you are talking to is probably not the person who caused the problem. Don’t yell. Don’t run on at great length. Don’t sound crazy or make threats. Plenty of good people work for bad companies. Lots work for good companies that make an occasional mistake. Remember the Japanese proverb: “The first man to raise his fist or voice has lost the argument.”

### **Tips to Remember When Disputing Errors**

Keep the following points in mind when disputing any and all errors:

- Be prepared with specific information before you call the merchant.
- Have all of the pertinent paperwork in hand.
- Make sure you can give the order date, what you ordered (the item number and price), when you were promised the item(s), your credit card number, and how much you were charged.
- Be clear about what you want—a refund, a replacement, shipment by a certain date, repair, etc.

- Most people (not all) respond best if you tell them clearly, calmly, and reasonably what you want. Keep notes of your conversation.

If you are not able to resolve the issue and the error/overcharge persists, instructions on how to proceed are printed on your bill, probably on the back. Just follow them. The rules are simple: If you report a problem to the lender in writing within 60 days of the billing date, the bank must investigate it and respond to you within 30 days. While they are investigating, you don't have to pay the disputed amount or any finance charges on it. However, if their investigation shows that the item was correct, they can restore finance charges retroactively and you will have to pay them.

If you've tried "in good faith" to resolve the problem with the merchant, by law the bank must help. All banks know this and most will be very helpful. Don't expect a fight.

### **The Next Step—Asking for a Credit in Writing**

Most credit card issuers require that you make a formal request for a credit to your account (called a chargeback) to make up for the billing error/overcharge. When writing to the credit card issuer, make certain that you give these important facts in the letter and use the same address as required for errors on your bill:

- The date you are writing the letter
- Your name and address, as they appear on your bill
- Your account number and the statement date on the bill
- Start with "I am writing about a problem with (company name). The transaction date was (mm/dd), the posting date was (mm/dd), and the transaction amount was \$(amount)"
- Then explain, clearly and briefly, what's wrong
- State that you tried "in good faith" to resolve the problem directly with the merchant, but you were not successful. List the date(s) that you made phone calls and what you were told by the merchant. Enclose photocopies of your letters to the merchant and the merchant's response, if any. Don't overload the bank with information. You're only proving that you acted in good faith—you're not writing a romance novel
- Keep copies for your records
- Always, always, always send your letter certified or registered mail.

When you request a chargeback, the bank will credit your account and charge the amount back to the merchant. If you have done everything you were supposed to, this must happen within one billing cycle. If the merchant doesn't respond, the amount is gone from your bill forever. If the merchant disputes the chargeback, the bank has to decide who is telling the truth. And if you don't like the decision, you can always take it to court.

### **If You Happened to Pay Your Bill in Full Before Noticing an Error**

If you do this, you may run into problems. Strictly speaking, the Fair Credit Billing Act states that you may not have to pay “the remaining amount due,” which by this time is already too late.

Our advice (I am not a lawyer and can't give legal advice) is to follow the standard procedures for disputing a charge and don't simply bring up the issue of whether you've already paid part or all of it. Odds are, your bank won't raise that issue either.

Of course, it's always a good practice to examine bills carefully before you pay them. If you question a charge 58 days after the date of the infraction or a month or more after you've already paid the bill, the bank may wonder if you're really acting in “good faith.”

### **Unauthorized Charges**

If you find that someone else (perhaps an ex-spouse?) has used your credit card number, write to the card issuer and specify that an “unauthorized charge” be made. If you don't use those words, the issuer most likely will treat the incident as a “billing error.”

There's a big difference between an unauthorized charge and a billing error. While a billing error must be reported within 60 days, there are no time limits for reporting unauthorized charges. Most people don't get this straight. In fact, a brochure prepared by the Federal Trade Commission (FTC) and a pamphlet prepared by AMEX incorrectly states that cardholders should report unauthorized transactions as billing errors, and that they have only 60 days to do so. A spokeswoman for AMEX stated that its information came from the FTC; a lawyer for the FTC stated that the agency is now aware of the mistake.

“The most a cardholder will be liable for if someone used their card is \$50,” the FTC lawyer said. “If the card is not used in the transaction, the cardholder won't have to pay any of it.”

That last bit, about “if the card is not used,” seems to refer to phone or Internet charges, where the person helping themselves to your account doesn't need the actual card to complete the purchase.

## **SECTION 8: Repairing Your Credit**

### **Can You Really Fix Your Credit?**

First of all, the phrase “Credit Repair” is a misnomer. You cannot simply repair your credit like fixing a flat tire. It takes time and patience to repair your credit, as we have said numerous times already.

Everything that a credit repair clinic can do for you legally, you can do for yourself at little or no cost. The information in this section helps you fix errors on your credit report and clean up those “questionable” items. While you may not be able to remove accurate, negative information from a credit report, the law does allow you to request a reinvestigation of information that you dispute as inaccurate or incomplete. There is no charge for this. Also, if the credit bureaus cannot verify information on your credit report, they must remove it. For instance, if a credit bureau cannot contact a collection agency that reports a collection on your report, it cannot verify the information and it must delete the entry.

### **Basic Strategy**

#### **1. GET YOUR CREDIT REPORT.**

For directions on how to obtain copies of your credit report, see Section 1. Request them from all three of the credit reporting agencies—Equifax, Experian and TransUnion.

To pull your credit from all three credit bureaus, you can click on this link:  
<http://www.myfico.com/Default2.aspx?AID=10537867&PID=2897569>

#### **2. ANALYZE YOUR CREDIT REPORT.**

Analyze your credit as outlined in Section 2.

#### **3. DECIDE WHICH ITEMS YOU WILL TARGET FIRST.**

Section 2 discusses how to identify items—positive and negative—on your credit report. Make a list of all negative information you find. Once you develop this list, rank each item according to the amount of damage it is doing to your overall credit picture. Rank the most damaging information first, followed by the next most damaging information, and so on. As was discussed earlier, these are:

- Bankruptcy
- Foreclosure
- Repossession
- Loan default
- Court judgments
- Collections
- Past due payments (less than 30 days lat)
- Late payments (30+ days late)

- Credit rejections
- Credit inquiries

You will want to get rid of the most damaging items first, so ranking them will help you form your plan of attack. Do this for each credit report, as they may not all contain the same information. If two bureaus duplicate the same bad information, you will need to write to each credit agency individually.

#### **4. REQUEST CORRECTIONS AND DISPUTE QUESTIONABLE NOTATIONS.**

##### **What to challenge**

Always shoot for a complete deletion of any bad information. Just like a permanently stained dress is not sexy no matter how low the neckline, a blemished notation on your credit report is still a blemish. Thus, don't bother challenging the information within a collection listing, charge-off, court record, repossession, foreclosure, or settled account. Since the basic nature of these listings is negative, changing the information within the listing will yield no improvement. Severely negative listings must be disputed on the basis of complete deletion or not be disputed at all.

##### **Don't forget to dispute personal information**

As a matter of policy, we generally advise disputing everything on your credit report that is not current, including previous addresses, employers and maiden names. As identity theft is becoming so rampant, you don't want to have anything on your credit report possibly causing mix-ups with other people's information. I know of several instances where a consumer's prior address allowed the poor credit information of another person to creep on to the consumer's report. Be sure all variations of your personal information are completely removed from your credit report. Make it your goal to show only one entry for each of the following: your employer, your legal name (no extra nicknames or maiden names), your current address and your social security number.

The possibility of identity theft is one good reason to remove as much personal information as possible. Another is that they may not be able to verify information without an old address or maiden name, earning you an instant deletion.

##### **Address each item individually**

It is very important that each questionable item is dealt with individually. So make sure your personal information is up to date and correct. Write a letter to each of the credit-reporting agency. Always provide a reason for your dispute. Always tell the bureau your desired outcome of the investigation. Don't sound like you work for a credit repair agency. Be creative and always include sentences or phrases that will convince the credit bureau that you're real. They don't care about the unfairness of your situation. Include any documentation you have that substantiates your dispute. Don't use the credit bureau supplied forms to dispute your listings.

## **Write a letter to each credit reporting agency**

The Fair Credit Reporting Act (FCRA) states that if a bureau corrects a mistake on your report, it is required to share this information with other bureaus, but this doesn't mean that the other bureaus have to do anything with this information. And since the law doesn't require agencies to update their information in their databases based on other bureau's actions, they don't.

## **What to say in your dispute letter**

You don't have to be fancy or technical in your dispute letters to the bureaus. The most important thing is to be clear about what you are disputing and why you are disputing it. Here are some tips to keep in mind when writing your letter:

- **Always provide a reason for your dispute.**  
Always indicate exactly what you are disputing (i.e., “not mine,” “not late,” or the accuracy of the information contained within the listing). The credit bureau must know if you are disputing the existence of the listing or the information within the listing. The bureau cannot begin an investigation unless it knows whether you believe the listing doesn't belong on your report or if you believe the information on the listing should be changed. If you are unclear in your dispute letter about the nature of your dispute, the credit bureau will promptly return your letter. If you dispute a listing on the basis that you were “not late,” and if the credit bureau fails to verify the listing, then the listing will be changed and appear as a positive listing. If you dispute a listing on the basis that it is “not mine,” and if the credit bureau fails to verify whether or not the information is indeed yours, you're out of luck. Keep in mind that without a clear statement that the accuracy or completeness of specific information is “disputed” or “challenged,” your letter might not be construed as an exercise of rights under the Fair Credit Reporting Act. Sample letters are included in Section 17.
- **You can still dispute a negative listing even if you were late paying on the account.**  
You have the right to dispute your credit report so long as you have reason to believe that it is unverifiable, inaccurate, or obsolete. To dispute information that is technically accurate, but should still be investigated and deleted on the basis of verifiability, you must invent other means of disputing the listing besides claiming that it is “not mine” or “was never late.” In this case, make a clear statement that the accuracy or completeness of specific information is “disputed or challenged.”
- **Always tell the credit bureau your desired outcome of the investigation.**  
You must always include in your dispute letter what you would like done with the listing. There are two options—a correction to the listing or an entire deletion. I've seen positive listings deleted when only a correction was wanted because the outcome was not indicated.



- **Don't sound like you work for a credit repair agency.**  
The credit bureaus receive over 10,000 disputes a day and your dispute should look much like any other one they receive—not polished and professional. Always include indicators of authenticity in your dispute. Don't forget that the job of the checker is to reject irrelevant disputes and to investigate bona fide disputes. You may ensure that your disputes sound authentic by including things that only a true, frustrated consumer would write, such as “My son's a banker, and he mentioned that I could write to you and you would clear up these mistakes.” Original indicators of authenticity cannot be listed here or they would cease to be effective, but you must get creative and always include sentences or phrases that will convince the credit bureau that you're for real. Handwriting your dispute letters is recommended.
- **Remember that the bureaus don't care about the “unfairness” of your situation.**  
The bureaus are not going to take your word or delete information because you've been caught in an “unfair” situation. Even if your situation is not your fault, or you've been robbed or cheated, this will make no difference in disputing your credit. Clearly defined disputes—stating your rights and why the information on your report is not correct—get results.
- **Include any documentation you have that substantiates your dispute.**  
If you have any documentation that backs up your dispute, like a bank letter stating that the information is false, include it with your dispute letter. (Note: If you decide to contact the original creditor, it's great insider information to know that the credit bureaus are legally required to pass on all information supplied by consumers to the original creditor during a dispute.)
- **Don't use the credit bureau-supplied forms to dispute your listings.**  
With each copy of your credit report, you should also receive the credit bureau's form for disputing credit listings. You should not use these forms for your dispute letters. Since the form often forces you to address things within their perimeters, you may not be able to cover all your points by using the form. Interestingly, the forms are not very specific and often are not taken as seriously by the credit bureau checkers as a personal letter. Prepare your disputes on your personal stationary, perhaps even handwritten.

### Order of dispute reasons

Most likely, your listing will come back as “verified,” for reasons we will be discussing a little later in the chapter. But you're not done yet. You will need to change the reason for the investigation so the credit bureau will have something new to investigate. The order of the reasons should be:

- Not mine

- Wrong amount
- Wrong account number
- Wrong original creditor
- Wrong Charge-off Date
- Wrong Date of Last Activity
- Wrong Balance
- Wrong Credit limit
- Wrong Status (there are about 20)
- Wrong High Credit (the highest amount you used)
- I didn't pay late that month

For example, the first time you challenge a listing, you would say the account is “not mine.” The second time through, you would say “never late.”

## **5. DOCUMENT YOUR CREDIT REPAIR EFFORTS.**

Documenting your efforts is such an important part of the process. As soon as you have ordered your credit reports and photocopied your credit report order letters and checks, you must create a precise organizational system to track your correspondences with the credit bureaus and your creditors. Why? Unfortunately, credit items you have worked so hard to remove can mysteriously reappear. If this happens, it is usually easy to have the items deleted again if you show your complete records on the first removal. Why take a chance? As you proceed through these steps, keep copies and records of all correspondence you send and receive, in addition to notes on all telephone conversations! Also, if you should encounter any special difficulty and would like help in repairing your credit, you will need these records to proceed.

Every time you have a telephone conversation with a creditor, you must document the conversation by recording the name of the person to whom you spoke, his position, the date and time of the conversation, what was said in the conversation, and what was agreed upon.

## **6. WAIT FOR THE CREDIT BUREAU TO FINISH INVESTIGATING.**

Once the credit reporting agency receives your dispute letter, it is obligated to investigate. The obligation is not contingent upon you having been denied credit. According to the Fair Credit Reporting Act (FCRA), the credit bureaus must take the following steps:

- The credit reporting agencies must resolve consumer disputes within 30 days.
- If a consumer complains that documentation in support of a dispute was disregarded, the credit bureaus have to consider and transmit to the furnisher all relevant evidence submitted by the consumer the first time.
- Consumers must receive written notice of the results of the investigation within five days of its completion, including a copy of the amended credit file if it was changed based on the dispute.

- Once information is deleted from a credit file, the credit bureaus cannot reinsert it unless the entity supplying the information certifies that the item is complete and accurate and the credit bureau notifies the consumer within five days.

The Federal Trade Commission notes that inaccurate credit reports are the number one source of consumer complaints, and that it is quite common for problems to take six or more months to be resolved. All of the big three agencies are working on making sure that all disputes are handled within 30 days.

If the new investigation reveals an error, you may ask that a corrected version of the report be sent to anyone who received your report within the past six months. Job applicants can have corrected reports sent to anyone who received a report for employment purposes during the past two years. However, this is unlikely to repair any damage done when your credit report was first pulled, so don't waste your time or energy on this approach.

## 7. EVALUATE THE RESULTS OF YOUR REPAIR EFFORTS.

Okay, so you saved the original credit reports you ordered, didn't you? And each item you challenged? Good, you will need them to evaluate how well you did. It's all part of Section 16—documenting your efforts.

When you get your “repaired” credit report back from the credit bureaus, the bureau will summarize what changed on your credit report due to your challenges. You can compare this list to your own notes or to the previous credit report.

Each item will have been resolved in one of three ways:

1. If the listing is **not mentioned in the results list**, check to make sure that you included it in your dispute. If you did include it, was your request sufficiently clear? You will need to dispute the item again in your next dispute letter.
2. The bureau will tell you **the disputed item was investigated but verified**. If the item is not removed, the credit bureaus will probably give you a cryptic reason, like “item verified.” The creditor may have responded to the credit bureau's request for re-verification. They may have simply stated that the listing was correct and, in this case, the bureau will take their word for it. Now it is up to you to prove to the bureau that the item is not correct. The law requires that the bureaus accept any proof you may submit, as well as pass any documentation you provide on to your creditor for consideration. Be sure to send any documentation you have if you didn't do it the first time.
3. The bureau indicates that **the item was unverifiable**. The disputed listing was investigated as to the correctness of the information within the listing (such as late pay notations) and the listing was found to be inaccurate or unverifiable. In this case, the negative listing will now show up as a positive listing, or it will be deleted from your report altogether. Be careful not to have positive items deleted, especially if you don't

have many to begin with. As mentioned previously, this happens on occasion if you are not clear in your dispute. Credit repair agencies are notorious for disputing everything and having positive entries deleted.

#### **IF THE CREDIT BUREAU SENDS YOU A LETTER BEFORE THE INVESTIGATION IS COMPLETED.**

Sometimes consumers get letters in the mail after submitting a credit dispute asking for more information on your "credit repair agency." Many people panic over this, but it seems to be an automatic response, especially from TransUnion.

Why do they do this? Two reasons: to discourage the use of credit repair agencies (a good thing) and to try and trick you into submitting more information about your dispute (a sneaky underhanded thing). Why it is sneaky? Under the FCRA, if you provide more information about your dispute, even if you only write back to tell them you are not using a credit repair agency, this gives them 15 more days to investigate your dispute, which is definitely not to your advantage. Don't send ANYTHING back until your 30 days are up.

#### **8. IF A DISPUTED ITEM COMES BACK AS "VERIFIED," REQUEST THE METHOD OF VERIFICATION.**

If you get a notice from your the credit bureaus telling you the information you disputed has been verified as accurate, you can request the method of verification, which is your right. The credit bureau must give you this information within 15 days of the request.

This is an extremely important tool, as most credit bureaus these days are not doing a thorough job of investigating disputes.

Each credit reporting agency has a different process for handling these disputes, but all three use a similar system. The three bureaus collaborated through their trade organization to automate the entire reinvestigation process using an online computer program, E-Oscar.

All disputes received by the credit bureaus are done via written letter, the telephone or the credit bureaus online dispute service. Even if the credit bureau receives a written dispute highly detailed and with documentation, each dispute is reduced to a two-digit code – the best guess of a minimum wage employee.

Under the FCRA, the credit bureaus are required to send the information on to the furnisher of the consumer's account (in other words, the original creditor), but all they receive is the two-digit code.

So write to request the method of validation.

#### **9. CALL OR WRITE THE ORIGINAL CREDITOR AND ASK FOR PROOF THAT YOU WERE LATE, OR THE TRADELINE IS NOT YOURS, ETC.**

It is up to the creditor, such as a credit card company, auto or mortgage loan company to report information about your accounts accurately. If they are unable to provide you with proof of the negative listing, and you insist that the information they are reporting is inaccurate, then they could be in violation of the FCRA, section 623. As explained previously, DO NOT contact the original creditor if you have not first disputed the negative item with the credit bureaus.

For a long while it was difficult to sue the original creditor for providing inaccurate information, and therefore consumers did not have much luck trying to force creditors to do any research. Recently, however, several cases have been successfully argued and won in court regarding the original creditors.

#### **10. REPEAT THE STEPS ABOVE IF YOU ARE NOT GETTING THE DESIRED RESULTS FROM THE CREDIT BUREAUS.**

As explained above, the possibility that your claim was misunderstood, overlooked, or mishandled is good. Fixing your credit takes time, and there is nothing you can do to expedite the process. However, you can always resubmit your claims. Here are some tips for doing so:

- **Be persistent.** Become more insistent with each dispute. As you submit one dispute after another, it may become increasingly difficult to get the checker to initiate an investigation. Your first one or two disputes should be friendly and polite. Just like any other consumer, you can become frustrated as time passes. You may threaten to hire an attorney; you may threaten to complain to the FTC and your state's attorney general, etc. A sample follow up letter is provided in Section \_\_\_\_\_.
- **Be creative.** Create and utilize other techniques that help further the idea that the dispute letter is from a truly wronged and disadvantaged consumer. The checker is only interested in investigating disputes that truly are erroneous and damaging. Again, because the agencies are flooded with requests, they tend to give priority to those that seem most urgent.
- **Do not bombard credit bureaus with disputes.** Sending one dispute right after another is wasteful and counterproductive. You may wind up alienating the credit agency so that it holds up your progress. Remember they cannot legally stop you from restoring accurate information, but the people who run the agencies—like anyone else—probably do not respond well to harassment. Also remember, that credit repair is a time-consuming operation requiring great patience. The rule of thumb is to wait 60 days between disputes.

### **If a Removed Item Comes Back onto Your Credit Report**

Okay, you've removed a listing and are breathing a deep sigh of relief. Then you get a letter in the mail from a credit bureau telling you the item has been added back on. What happened? This actually is becoming more commonplace since new credit laws require

that bureaus investigate and resolve disputes within 30 days. The bureaus sometimes will remove the negative information temporarily until the information is verified as true. Then the bureau will reinstate any information verified to be true and notify you of this. By law, they can do this, but they have to notify you in writing within 5 days of putting the item back on your report. If they don't do this, it's a violation of the FCRA and you could potentially sue them for \$1,000.

## **Specialized Credit Repair Techniques**

Depending on the type of listing, you may also want to try these separate techniques:

**COLLECTIONS.** You should always try to use the debt validation technique on collections. This should be in addition to your credit repair efforts with the credit bureaus. The debt validation technique is given in Section 13.

**CHARGE-OFFS.** Try disputing the information within the listing, like the date the account was opened, the high balance, the amount owed, etc. If any of the information is incorrect, you have a good chance of getting the whole thing deleted off of your report.

**JUDGMENTS.** If you were never served for a judgment, you may have a chance of getting it vacated (dismissed) as we discuss in Section 14. Call your county courthouse for information on judgment serving requirements in your state and how to file a motion to vacate.

**LEGAL ACTION.** If you feel that a credit bureau is not taking you seriously enough or that they are flat out refusing to perform the necessary investigations to handle your dispute, you can sue them in small claims court. Potentially, you can win a settlement against them and get the listings removed.

## **SECTION 9: Erasing Credit Inquiries**

### **When Is It Worthwhile to Get Inquiries Removed?**

As we've noted, every time you apply for credit and the credit grantor checks your credit report, a credit inquiry is placed on your file. If you have too many inquiries on your report, this can have a negative impact on your credit. To attract potential creditors, you don't want to appear too used and abused in your previous credit "relationships." Lots of inquiries can give the wrong impression.

Further, some merchants and credit grantors are oh-so-sneaky, pulling your credit without your knowledge. The legality of this practice is a little fuzzy, with lots of loopholes credit grantors can use. Why would credit grantors pull your credit without you knowing it? Most of the time it's because they think they have something to sell to you.

Credit inquiries generally do not destroy an otherwise perfect credit report. They can turn your credit report from good to marginal or marginal to bad, however. (If your credit is utterly trashed, don't bother removing inquiries; concentrate on rebuilding your credit or repairing existing credit.)

If you have been turned down for credit because of excessive inquiries, however, it's time to get them off of your report. It is hard to tell how much impact inquiries have on your credit score, but readers tell me they have noticed a marked increase in their score with the removal of inquiries.

### **Permissible Purpose**

Under the FCRA, there are only five reasons why someone is allowed to pull your credit:

- Firm offer of credit (from a creditor with whom you applied for a loan or credit card)
- Firm offer of insurance
- Employment
- As directed by a court order
- The government can pull your information under the new Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 for counterintelligence and counterterrorism purposes.

If you have a creditor who is pulling your credit for any reason other than the above, they are in violation of the FCRA. And yes, you can sue them. You might mention this in the letter you write asking that they be removed.

## **Basic Strategy**

Many of your inquiring creditors may simply agree to delete the inquiry as a courtesy, or because they cannot (or will not) verify your authorization. It is not likely that you will need all of your credit inquiries removed—just enough of them to keep you from being denied credit.

There are four basic steps:

### **1. GET AND REVIEW YOUR CREDIT REPORT**

See Section 1 for information on obtaining your credit reports. Request them from all three credit reporting agencies—Equifax, Experian and TransUnion. If you have recently been denied credit, the reports will be free.

### **2. ANALYZE YOUR REPORT FOR INQUIRIES**

When your credit reports arrive, look toward the end of the report to find the inquiries. Identify only the inquiries that are shown to credit grantors:

- Inquiries that will count against you are ones that actually occurred because you applied for credit. Your credit report will indicate that this is the case next to such inquiries. All other inquiries don't count and you can ignore them.
- You should recognize some of these as places where you applied for credit, but others may be a complete mystery to you. The ones that are a mystery are the ones you should really pay attention to, making them the prime target of your credit inquiry removal process.
- Find the addresses for each credit inquirer. Your Experian credit report will list addresses for each. Your TransUnion and Equifax reports will not include addresses. Match your Experian with your TransUnion and Equifax reports. You should be able to use the same addresses for the inquirers that are listed on Experian. If some of the inquirers don't show up on Experian, but do show up on either TransUnion or Equifax, you will have to call the credit bureau to get the address. If you have an inquirer on your TransUnion credit report and you can't reach TransUnion by telephone, you might try calling the toll free directory (1-800-555-1212) and request the toll free number for the inquiring creditor.

Once you have found all of the addresses for each inquiring creditor on each credit report, you are ready for step three.

### **3. WRITE TO THE CREDITOR TO DISPUTE THE INQUIRY**

Prepare letters to each inquiring creditor asking them to remove their inquiry. The Fair Credit Reporting Act allows only authorized inquiries to appear on the consumer credit report. You must challenge whether or not the inquiring creditor had proper authorization to pull your credit file.

**What to do if the creditor sends you documentation stating you authorized your credit to be pulled**



Some creditors may provide documentation that you authorized a credit inquiry. Read the authorization that you signed very carefully. If there is any ambiguity, you can write back and argue that the inquirer's authorization form was too complicated and not easily understood by the layman. Simon's letter might say something like, "I had no idea I was authorizing a credit check, and your salesman certainly never mentioned it." You can threaten to contact the State Banking Commission and complain about a deceptive and unclear authorization form if they don't remove your inquiry.

### **Some creditors will try to ignore your challenge**

Be sure to send each letter "certified mail, return receipt requested" and keep close track of the date you sent the letter. If the inquiring creditor doesn't respond within 30 days, you will have ample grounds to call the inquiring creditor and demand some action. At that point, it's almost irrelevant whether or not you authorized the inquiry. Now the issue becomes the creditor's lack of response to a consumer dispute. Stand your ground. Demand that the inquiry be removed immediately or you will complain to the State Banking Commission or similar authorities.

### **4. SEND PROOF TO THE BUREAUS**

If the creditor sends you a letter agreeing to remove the inquiry, don't take their word for it. Send a copy of this letter to each of the credit bureaus that includes the negative inquiry.

## **SECTION 9: Collection Agencies**

### **Your Rights When Dealing with a Collection Agency**

If your credit problems have progressed to the point where your creditors have turned your case over to collection agencies, it is important to know your legal rights. (More about how to take legal action against them in Section 15.)

Collection agencies are not allowed to:

- Call your office
- Call your home before 8 a.m. or after 9 p.m.
- Address you in an abusive manner
- Call family or friends in an attempt to collect your debt
- Harass you
- Make false or misleading statements
- Add unauthorized charges

If any of the above is happening to you, tell the collection agency to stop harassing you. If it continues, ask for its name and address and report it to the Better Business Bureau, the Federal Trade Commission, or your state's attorney general's office. These telephone numbers can be found in your telephone book or by calling directory assistance.

The federal Fair Debt Collection Practices Act (FDCPA) also states that you can demand that the collection agency stop contacting you, except to tell you that collection efforts have ended or that the creditor or collection agency will sue you. You must put your request in writing.

Please note, however, that the FDCPA applies only to bill collectors who work for collection agencies. While many states have laws prohibiting all debt collectors (including those working for the collection departments of creditors) from harassing, abusing, or threatening you, these laws don't give you the right to demand that the collector stop contacting you. There is one exception: Only residents of New York City have a local consumer protection law that allows them to write to any bill collector and say "Stop!"

If a bill collector violates the FDCPA, try to get the collector back on the phone and repeat whatever you said the first time that caused the collector to make the illegal statement(s). Have a witness listen in on an extension or tape the conversation. Taping is permitted without the collector's knowledge in all states except CA, CT, DE, FL, IL, MD, MA, MI, MT, NH, PA, and WA.

Then file a complaint—in writing. You can even file a complaint if you don't have a witness, but a witness helps. File your complaint with:

- Federal Trade Commission  
6th Street & Pennsylvania Avenue NW  
Washington, DC 20850  
202-326-2222  
<http://www.ftc.gov>

Next, complain to your state consumer protection agency. Then send a copy of your complaint to the creditor who hired the collection agency. If the violations are severe enough, the creditor may stop the collection efforts.

If the violations are ongoing, you can sue the collection agency, and the creditor that hired the agency, for up to \$1,000 in small claims court for violating the FTC regulations. If the violations are outrageous, you can sue the collection agency and creditor in regular civil court. (More about this in Section 15.)

## Common Collections Tactics and Rebuttals

Some collection agencies do employ collection methods involving the use of false and misleading statements. A common tactic is to insist that you wire the money that you owe through Western Union. They might tell you that if they do not receive the funds immediately, interest might be added to your debt.

Tell them “Nice try” (in other words, “No.”) It’s only going to add more money to your debt in Western Union fees if you did do it. Many collectors, especially when a debt is more than 90-days past due, will suggest several “urgency payment” options, including:

- Sending money by express or overnight mail. This will add at least \$10 to your bill. A first class stamp is fine.
- Wiring money through Western Union’s Quick Collect or American Express’ Moneygram. This is another \$10 waste.
- Putting your payment on a credit card not charged to its maximum. You’ll never get out of debt if you do this.
- Provide your checking account number so that they can access your funds immediately over the telephone (or they will “post date” the check for when you know that the funds will be in your account). Are you crazy? NEVER give out your checking account and check routing numbers.

While the FDCPA allows a collector to add interest if your original agreement calls for the addition of interest during collection proceedings, or the addition of such interest is allowed under state law, it is not necessary to spend the money or risk your checking account for an “urgent” payment. The three or four days it may take to mail a payment with a first class stamp, if they do decide to come after you for interest, won’t break the bank.

The “urgent payment” scam aside, however, it is generally in your best interest to settle your debts as quickly as possible. Before obtaining a court judgment, a bill collector

generally has only one-way of getting paid: Demand payment by calling you and sending you threatening letters. If you refuse, the collector can't do much else short of suing you. Once the collector (or creditor) does sue and gets a judgment, however, you can expect more aggressive collection actions:

- If you have a job, the collector will try to garnish up to 25% of your net wages.
- The collector also may try to seize any bank or other deposit accounts you have.
- If you own real property (real estate), the collector will probably record a lien, which will have to be paid when you sell or refinance your property.

Some collection agencies will agree to settle with you for far less than you owe and then turn around and hire another collection agency to collect the difference. However, in many states this is illegal. Once a creditor deposits or cashes a full payment check, even if she strikes out the words "payment in full," or writes, "I don't agree" on the check, she can't come after you for the balance. The states in which this law is enforced include:

Arkansas	Colorado	Connecticut	Georgia
Kansas	Louisiana	Maine	Michigan
Nebraska	New Jersey	North Carolina	Oregon
Pennsylvania	Texas	Utah	Vermont
Virginia	Washington	Wyoming	

Some states have modified this rule. In the following states, if a creditor cashes a full payment check and explicitly retains his right to sue you by writing "under protest or without prejudice" with his endorsement, then he can come after you for the balance. But those exact words must be used. If he writes "without recourse," communicates with you separately, notifies you verbally, or writes on the check that it is partial payment, it is not enough.

Alabama	Delaware	Massachusetts	Minnesota
Missouri	New Hampshire	New York	Ohio
Rhode Island	South Carolina	South Dakota	West Virginia
Wisconsin			

## **SECTION 11: Negotiating Your Debts** **For Less Than You Owe**

### **Which Debts Are Negotiable?**

#### **Most Unsecured Debts Can Be Settled**

As mentioned before—probably numerous times—an unsecured debt is a debt where there is no collateral. Unsecured debts include medical bills, credit cards, department store cards, personal loans, collection accounts, student loans, amounts remaining after foreclosure or repossession, and bounced checks. There are a few creditors who will not compromise (utility companies rarely settle for less than the full balance), but most creditors will take a less-than-full payment as “settlement-in-full” to close a troublesome account.

#### **Secured, Collateralized Debts Are an Entirely Different Story**

It is unlikely that you will be able to negotiate a settlement on any kind of secured loan. A secured loan is a loan, which, upon default, has a piece of property, which is repossessed by the loan company in order to recoup the costs of making the loan and the money lent. You will never find yourself looking at a charged off mortgage—your home will have been repossessed. The same is true for auto loans.

If you have one of these types of loans, you can ask the creditor to rewrite the loan for the balance owed including all past due amounts with extended terms to accommodate a lower payment. You should also request that the new loan be at a reduced interest rate. (It doesn't hurt to ask.) In any case, once re-written, the past due account will be paid-off and the new loan will begin a new reporting history.

If the creditor will not agree to lower payments, they may consider at least rewriting a new loan with payments equal to the old loan. The lender would then take the new loan proceeds and pay off the old loan balance. This may not help in lowering your payment, but it will provide you with a fresh start, with the account reflecting a current status. These options are not always available with all creditors but should be taken into consideration and presented to the creditor (they won't always offer) when trying to get your credit in order.

#### **Repossession Loans**

The one exception to “no settlements on mortgage and auto loans rule” is if a piece of property is repossessed to satisfy a secured loan balance, and the sale of the property fails to cover the full loan amount. Then you may find yourself with a collection account for the remainder of the unpaid loan. In this case, you can usually negotiate a settlement on the balance.

## **Student Loans**

Student loans are a completely different kind of loan animal. In rare cases, fees and penalties might be waived in order to help a student rehabilitate a loan, but that is usually the limit. An excellent source of information on student loans and settlement programs can be found at <http://www.ed.gov/>.

### **Do everything possible to prevent your debts from going to a collection agency**

Simply put, it is usually easier to negotiate with the original creditor. Avoid having an account turned over to a collection agency at any cost.

It varies from creditor to creditor, but most credit card companies allow 180 days to 210 days before an account is charged off. After a debt is charged off, typically, the account is turned over to collections.

While the account is considered a “past due” account and may be approaching the charge-off stage, it is often possible to prevent the charge-off by starting to make the normal monthly payment. This holds the account from going further past due. Once the normal payment is being paid regularly, even though the account may remain past due, regular monthly payments may prevent further delinquency and prevent charge-off. If possible, pay the normal monthly payment plus a little more in order to begin to catch up the past due payments. Extra payments will eventually bring the account current.

Many creditors will allow you to keep your accounts open or even to reopen closed accounts if you bring your accounts current. They also have programs where you can make three payments that are larger than the minimum in order to catch up and bring your account current. You may want to consider these options.

## **Statute of Limitations**

Before you begin settlement negotiations, take a good look at the statute of limitations on older debts. Every day, consumers pay off collection accounts and charge-offs that they do not have to pay off because the statute of limitations has expired for the open account. Consumers pay off these accounts because they still appear on their credit reports. The Statute of Limitations begins to run from the day the debt, or payment on an open-ended account, was due. This information can be a powerful weapon in unburdening yourself of old debts, because creditors have a limited time in which to sue you.

The first thing you should do is determine if the statute of limitations for collecting a debt in your state has passed. (See Appendix 4 for state-specific information.) In most cases, a debt will disappear from your credit report after seven years. If the debt is older than the statute of limitations, you should tell the bill collectors they are wasting their time by harassing you for an uncollectable debt, as the original creditor or the assigned collection agency cannot take you to court to get a judgment. Trying to collect on a debt is also a violation of the FDCPA. Your credit report will tell you the date of the last activity on

your account (the last time that you made a payment). If necessary, send the collector a copy of your credit report with the date of last activity circled, along with a certified letter stating that the statute of limitations has expired.

Please note that the amount of time a late payment can appear on your credit report has nothing to do with the statute of limitations. This is a very important distinction. Even though a debt may no longer legally appear on your credit report after seven years, you could still be sued for the debt if the statute of limitations in your state is longer than seven years.

Also, depending on which state you live in, if you make a partial payment you could be postponing the statute of limitations taking effect on your collection account or charge-off. A collector might call you one day and say you waived your rights when you made a deal with the collection agency. Do not take anything a collector tells you for granted. Make them prove it to you, in or out of court. For about half the population, the statute of limitations started ticking the day the last payment was made on their account.

If the debt is gone from your credit report and the statute of limitations is up on this debt, you're home free! If your debt meets both of these conditions, it is considered uncollectible and cannot appear on your credit report.

Sometimes consumers will pay off these accounts when they are not on their credit reports. In these cases, even though an account was removed from the credit file, a collector was monitoring the credit report for any activity. When the collector spotted activity, he assumed that the consumer was in a position to pay off old, expired debts and called the consumer for payment. All the consumer needed to say to the collector was, "I have an absolute defense, the statute of limitations has expired."

If you cannot wait for the statute of limitations to pass on a debt, you may consider trying to settle your debts yourself. Settling your debts is a time-consuming ordeal that many people find intimidating. As a result, they leave it to Consumer Credit Counseling Services to tackle. (More about Consumer Credit Counseling Services in the next chapter.) But you can do it yourself and will most likely get a better deal if you do. Consumer Credit Counseling Services' main goal is a worthy one, but they often do not negotiate on how the account will be reported, which could leave you debt free, but with a ruined credit report.

You really have two goals when settling debt:

- 1) Paying off the debt; and
- 2) Negotiating how the debt will be reported to the credit bureaus, so you are left with a clean credit report when it is all said and done.

It is possible, but not guaranteed, of course, that the average consumer can settle a debt for about 50-75 cents on the dollar. However, if your credit report reflects the fact that you didn't pay as agreed, future creditors will be more reluctant to grant you credit.

## **The Effect on Your Credit**

As your mother, father, or teacher has probably told you (no doubt numerous times in your life): “There’s no such thing as a free lunch.” Sometimes you can negotiate for an untarnished credit rating with a debt settlement, but this is getting increasingly tough to do. In most cases, when you settle with a creditor, your credit report will say “settled” next to the account for which the settlement took place. This has a negative affect on your credit score.

You should weigh the fact that even if you have 90- or 120-day late payments, these may have less effect on your credit score than having a “settled” account notation. (Refer back to Section \_\_\_\_\_ for credit scoring factors.) Don’t believe what any collector tells you about the effect something will have on your credit. They are generally minimum wage, short-term employees who don’t have a clue.

## **Getting Ready to Negotiate**

Ok, you’ve decided that you want to go ahead and settle your debts.

If you haven’t already done so, refer back to Section 11 and get copies of your credit reports from all three agencies. There’s no point in dealing with the one creditor who is harassing you with phone calls at dinnertime if there are others out there who’ll be calling you next month.

Once you have your credit reports in hand, identify the debts that you are interested in settling. Look for accounts notated with:

- Account turned over for collections;
- Account sold;
- Account charged off; or
- Will say nothing at all, but give late payment dates.

## **Who Do You Contact?**

It really depends on who is holding the “strings” to your debt. Obviously, if an account has been “turned over for collections,” you will need to contact the collection agency. (Before you try to settle collection accounts, though, try using the debt validation techniques described in Section 13.)

If your account listing falls under numbers 2 or 3 above, or says nothing at all but includes late payment dates, call the original creditor to determine the status of the account.

The method of contact varies by the situation and whom you are working with.



## **Collection agencies**

Never contact a collection agency by phone. Never! Collection agents are not trained to settle with you. They are paid to collect money, and they will say anything to get you to pay. You are opening yourself up to possible abuse, which though it is illegal, is extremely common. If you say the wrong thing to a collector in the heat of the moment, it could ruin your chances for a good settlement in the future.

Letters are the best way to contact a collection agency. Send the letter certified, signature required, so you have a paper trail to follow during the settlement procedures. Believe me, you might need it. Some collection agencies are starting to refuse certified mail if they think the letters might be part of your gaining the legal upper hand. There is a sneaky way around this, though. Write "payment enclosed" on the envelope. This is sure to get them to accept and open the mail!

If you know the fax number, you can also fax your settlement offer to the collection agency. There are many services available which offer a "certified" delivery of the fax receipt, which is almost as good as the certified letter receipt.

## **Original creditor**

While contacting a collection agency is not recommended, you should initiate contact with the original creditor by phone. If you still have your credit card, the 1-800 number should be listed on the back. Otherwise, look on an old statement or call the toll free information directory at 1-800-555-1212.

One thing to remember as you speak with a representative: they are taking notes and these notes become part of your permanent account information. Keep your conversation simple and straightforward. Don't lose your temper. It's pointless, and it definitely won't help your efforts.

Ask for the customer service department. When the agent gets on the phone, ask for the status of the account. If the account is in collections, you may also find that you will be transferred to the collection department of the company. Don't panic, this is all normal.

When you have the right customer rep on the line, ask them if they would be interested in considering an offer to settle the account, or if you have to go through the collection agency currently handling the account.

If the answer to the question "will you consider an offer to settle" is yes, don't be surprised if you are made an offer on the spot. If you like the offer, tell them you will be following up with a letter and a fax. Ask them where the paperwork should be sent. Keep in mind, though, that you can usually get a better deal than the first offer. Ask for the representative's first and last name, and direct telephone number. Never give them the money at this time, though they will try to get you to pay on the spot with a check by phone or a credit card. You absolutely need a written agreement between you and the

creditor before you send them a cent. If you don't like the offer, tell them you will think about it and get back to them.

If they don't make you an offer or say that they won't consider an offer (this rarely happens), thank them and ask for mailing and fax information. The rep may not be aware of settlement programs or might simply be wrong.

### **What if the creditor contacts me first and makes an offer?**

Sometimes the creditor may contact you by phone or mail, and make you an offer to settle the account. When this happens, you can be sure that you can get a better deal than the one offered. If this contact is by phone, listen carefully, get the rep's name and direct telephone number and the company address to which you will be sending your settlement.

After you get off the phone, or review the letter, use the sample letter Counter Offer in Section 17 to prepare an offer of your own.

If you have been getting a series of letters from the credit card company and the offer keeps getting better, you may be wondering at what point you should accept. Keep this basic rule in mind: most creditors will not go below 30%-50% of the original balance. If the offer approaches these figures, consider accepting. Use the sample letters Acceptance of Written Offer and Agreement to Settle a Debt in Section 17 to get your settlement agreement in writing.

### **Other places to get address and fax numbers**

If you've been unable to get the address and/or fax number for the creditor, some online resources may help:

- The Better Business Bureau – <http://www.bbb.org>
- Links to all 50 United States government Corporation Commission websites - <http://www.residentagentinfo.com>

You could also try your secretary of state or your state corporation commission who maintains a list of all businesses in the state and their contact information.

### **How long does the debt settlement process take?**

If you are making a lump sum payment to settle your debts, the process can take as little as one month. That is, of course, if negotiations between you and the creditor don't drag out. Obviously, if you are making payments to settle the debt, it could take as long as four years to settle your debts.

## **What Makes a Creditor Say ‘Yes’ to a Debt Settlement?**

Creditors will agree to a plan when they feel it is their only chance to get money from you. Their thinking is that some money is better than nothing. You can help this impression along by hinting that your only other option is declaring bankruptcy. However, no matter what you may hint or flat out state to them, creditors have their own ways of determining if you are teetering on the brink of bankruptcy.

### **What would make you appear as a candidate for bankruptcy?**

- If you haven’t been making payments on any of a significant portion of your debts, especially credit cards.
- If you don’t have anything to lose in a bankruptcy, like a home or car.
- If you are out of work, or show no probable future increases in pay.

You may think to yourself, “Ok then, I’m going to tell them that I haven’t been making payments on my other accounts, I’m out of work and I don’t own anything.” Be careful about this, as many creditors have invested large sums of money in high technology information-gathering systems. In talking to a representative for a major auto-loan company, I learned that they have software that obtains the following information just by entering your phone number:

- Where you bank
- Your credit rating
- Your criminal records
- Your payment history on all of your accounts
- Where you work
- How much you make
- Whether or not you own a home, a car, boat, etc.

Where is their software getting this information? From your credit report, from the credit application you originally gave them, public records, motor vehicle division, Social Security Administration, you name it – if records are public, you can bet they are being accessed. Public records not only contain any court records, but also recording of deeds of trust and other property transactions.

Get the picture? Creditors have “tools” to help them assess the situation.

## **What Makes a Creditor Say ‘No’ to a Debt Settlement?**

**You are current on all of your payments to this creditor and every other one on your credit report**

What if you are an honest person who wants to warn a creditor that you may not be able to make payments in the immediate future because of a job layoff or medical emergency? It’s counterintuitive, but some creditors are only willing to deal with you when there is a

significant problem. It's possible you will get them to work with you if you provide convincing documentation, however this is going to be a tough road. If they see you are in good standing on all of your accounts on your credit report, it's going to take some pretty fancy talking to convince them this kind of payment history isn't going to continue.

### **You have recent activity (charges and payments) on your account**

In one case that I know of, recent charge activity on the account made the creditor insist on 65% of the balance due over a lower 50% settlement amount. And can you blame the creditor? Obviously, the debtor believes he has money to spend.

### **You offer a very low settlement and want to make payments over an extended period of time**

You've got to give somewhere, and most creditors are not going to go for a 30% settlement offer payable over five years. They will be wondering what is going to prevent you from missing your payments again.

However, if you are going to make a full payment settlement offer, they might be willing to take a chance on an extended period.

### **They think they can sue you and recover the money**

If they think (or know) that you are making big bucks and/or have a lot of assets, why settle? They won't if they can simply take you to court and garnish your wages to recover the full debt. It's a better return for them, even considering legal fees, than accepting a settlement offer from you.

## **How Much Should I Offer?**

This is the number one question asked when someone begins the debt negotiation process. How much should I offer to settle the debt?

### **Each creditor is different**

Like any other industry, each company in the credit card industry has its own debt settlement policies. You may be able to settle with one company for 30 cents on the dollar, while another won't accept less than 75 cents on the dollar, even though the amounts of the debt and the terms of the repayment plan are identical.

Don't get stuck on this point. If a creditor is immovable in their settlement policies, it's because of internal policies written in stone from the dawn of time. Accept the offer, move on, and spend your time on a creditor who is more willing to work with you.

## **Lump sum offerings**

Obviously, if you are going to give your creditors cash, they will be much more interested in working with you. You will always get a better deal when offering cash. As a matter of fact, you may not get ANY deal if your offer includes a payment plan. However, if you have cash, you can usually get 30-50% reductions in the balances of the debt you owe, sometimes even lower. Again, we are in no way guaranteeing that you will get this kind of reduction.

## **Payment Plans**

If you don't have all of the cash that you need to pay off your agreed upon debt settlement, you have two options: a short-term payment plan or going on one of their "hardship programs."

If you choose the payment plan option (usually because you don't have another option), don't hold that information back while negotiating the settlement plan. It may completely torpedo the whole deal if you agree on a certain figure, then ask: "Can I make my payments over the next five years?"

**Short-term:** Some creditors will still agree to a sizeable debt reduction if you can pay off the whole amount in three to six months.

**Hardship program:** Credit card companies are used to dealing with the many debt reduction companies out in the world, and to save time by coming up with a custom plan for each one, they usually have a specific program for people who want to pay their debts but need one to four years to do it. One note here: Discover allows a maximum of one year on their hardship program.

## **What If I Can't Make the Payments on the Plan I Negotiated?**

You're kidding, right? If you have any reason to believe that you will not be able to make the payments on a plan you have negotiated, don't agree to it. Keep negotiating the payment schedule until you are confident it fits into your family's budget. No one can predict the future, especially in today's economy where layoffs are so common, but by making too optimistic a payment plan, you are hurting your future chances of working with this company.

If you find yourself in a situation where you absolutely can't afford your payments and you need to file bankruptcy, all the money you paid towards settling your debt is lost. Why? If you had filed a bankruptcy before going through the debt settlement process, you would be discharging the entire amount, not the amount remaining after making the payments. Bankruptcy wipes out all credit card debt. Are we encouraging you to file a bankruptcy? Absolutely not! We are just trying to cover all of the bases here.

## Repayment Plans

As we already mentioned, you will get the best terms if you can make a lump sum payment. But if you can't afford a lump sum settlement, keep the payment period as short as possible. If you need to stretch things out to six months, you will have less clout but still be in a strong negotiating position. As mentioned before, many credit card companies have a hardship program that may work for you.

Sometimes, your only option is to stretch out the payment period. There are some downsides to doing this:

- Payment plans may come at an interest rate as high as 20%. Obviously, the longer you take to pay off your debt, the more money you will pay. Keep in mind that your debt payment plan doesn't have to include interest. This is one more thing for you to put on the negotiation table.
- At some point you will want to begin rebuilding your credit. This process cannot begin until all of your old debts have been settled.

### Working out the payment plan

Just like buying a car from a dealership, the salesman (or creditor) tries to keep you focused on your monthly payment instead of the full price of the car (debt settlement). If you haven't run the numbers yourself, you may find yourself paying unseen interest or fees. Pay attention to all facets of the settlement: time period, interest rate, and penalties.

### Negotiating the interest rate on the payment plan

If your repayment period is six months or less, you can probably avoid paying any additional interest on the balance. Even if your payment plan exceeds six months, try to push for no additional interest on the balance during the repayment process.

Compounded interest adds up quickly. Let's say that you agree to pay off \$2,000 over two years at \$100/month with 12% interest, compounded monthly:

#### First year:

Month 1:  $(\$2000.00 - \$100) \times 1\% = \$1900.00 + \$19.00 = \$1919.00$   
Month 2:  $(\$1919.00 - \$100) \times 1\% = \$1819.00 + \$18.19 = \$1837.19$   
Month 3:  $(\$1837.19 - \$100) \times 1\% = \$1737.19 + \$17.37 = \$1754.56$   
Month 4:  $(\$1754.56 - \$100) \times 1\% = \$1654.56 + \$17.55 = \$1672.11$   
Month 5:  $(\$1672.11 - \$100) \times 1\% = \$1572.11 + \$16.72 = \$1586.83$   
Month 6:  $(\$1586.83 - \$100) \times 1\% = \$1486.83 + \$15.86 = \$1502.69$   
Month 7:  $(\$1502.69 - \$100) \times 1\% = \$1402.69 + \$15.02 = \$1417.71$   
Month 8:  $(\$1417.71 - \$100) \times 1\% = \$1317.71 + \$14.17 = \$1331.88$   
Month 9:  $(\$1331.88 - \$100) \times 1\% = \$1231.88 + \$13.31 = \$1245.19$   
Month 10:  $(\$1245.19 - \$100) \times 1\% = \$1145.19 + \$12.45 = \$1157.64$   
Month 11:  $(\$1157.64 - \$100) \times 1\% = \$1057.64 + \$11.57 = \$1069.21$

Month 12:  $(\$1069.21 - \$100) \times 1\% = \$969.21 + \$10.69 = \$979.90$

At the end of the first year of payments, your balance with compounded interest would be \$979.90. If you had negotiated an interest-free payment plan, your balance would be \$800. Big difference. That \$179.90 could pay for a romantic dinner at home, complete with wine and flowers, and still leave plenty to make an additional payment.

You may find that the companies have a set program and will not negotiate the interest. But it never hurts to ask, does it?

### **If I had the money to settle my debts, I would have paid them. What do I do?**

Well, you may have to make some hard choices to resolve your problems. You may have assets and cash that you hadn't thought to use for debt payments. Think about these ideas:

#### **Tap into the Old' Savings Account, Money Market Account, CD's'**

What's 2% interest, when you can save 50%? In addition to saving this money, (and potentially saving your credit rating if you get them to report you as "Paid As Agreed") you'll avoid high interest charges, late fees and other related charges.

#### **Increase Your Income**

Ever consider getting a second job? You can earn some extra money and meet new people! Stash this extra income into a special savings account until you have enough to negotiate a lump sum payment with your creditor.

#### **Decrease Your Expenses**

You've probably already thought of this, but just in case you haven't—it's an obvious place to start. How about learning to budget more carefully? If you learn to spend less, and put the savings into a special savings account, you'll have the cash to negotiate that lump sum payment. (And once you no longer have HBO to entertain you at home, you may even get out of the house more. Those beautiful babes don't usually just appear on the doorstep...)

#### **Yes, It's Time to Tap into Stocks, Bonds, Mutual Funds or Other Investments**

Even if you are making 10% on your money in these accounts, you are getting a better deal by negotiating a lump sum payment with a potential reduction of 50% or more. Getting a 10% return on an investment is often considered great, especially these days. But the piece of mind and peaceful-looking credit report you'll get by settling your debts is well worth some delay in building your retirement.

## **Borrow from Family, Friends, or Relatives**

Don't be afraid to ask those who love you to help. You'll be surprised how often family members and friends are willing to step up to the plate and render assistance, especially if this is the first time you've gotten into trouble.

## **Retirement Funds**

Although the experts warn against borrowing against your 401K, it's still better than defaulting on your debts. And if you have an IRA, SEP account, annuity, trust fund, or other forms of retirement funds, the tax penalties may still be less than the money you will save on a debt settlement. It's not a step to take lightly, so you are smart to consider all your options carefully.

## **Borrow from Whole Life Insurance Policy**

If you have cash value in a life insurance policy, you can typically borrow from these funds at a very low interest rate. Best of all, you need not repay the loan. As a consequence of this, however, your life insurance benefit will be reduced by the amount you borrow and any accrued interest. But, being debt free, the reduced stress may add years to your life!

## **Sell Assets**

Come on, now. It's time to be practical! You may have valuable assets that can be sold to raise the money you need for debt settlements, things that really are luxuries—like that extra car, recreational vehicles, jewelry you never wear, family heirlooms, gun collections or even your home. Remember, if you are unable to resolve your financial hardship through debt settlement, it's possible that the creditor will sue you for the cash.

## **Home Equity Loan, Second Mortgage, Home Refinancing, Reverse Mortgage**

This method should ONLY be used when it results in significant savings, and the effect of it resolves your financial hardship. You must be reasonably certain that you will never default on the obligation. Otherwise, it is neither practical nor financially sound to convert unsecured debt to secured debt and risk losing your home in the future.

## **Automatic Deposits into a Savings Account**

Talk to your bank about setting up an automatic transfer from your checking account or other regular account. Although we are not recommending it, sometimes you can simply stop paying your unsecured bills and transfer this money into savings until you have enough to start negotiating. (Remember, creditors are much more likely to settle for less money when you pay in a lump sum, and also when you are not current on the account.) Once you have the cash, begin negotiations to settle the account which is most



troublesome and which will result in the greatest savings first. One by one, continue the process in this fashion until all debts have been settled in full.

## **Other Negotiation Tips**

**Time is on your side.** As time passes, calls from creditors will eventually stop and the debt will be filed away for future attention. The longer the debt remains uncollected, the better your chances will be of getting a good settlement. Eventually, the creditor will consider the bad debt a loss in order to receive a corporate tax write-off. This does not necessarily mean that they won't pursue you for the debt. The corporation has options. They may then collect on the debt themselves, sell or assign the debt to a collection agency, press for a judgment and garnishment, or temporarily ignore it.

If you're contacted by more than one collection agency for the same debt, it means that the original creditor has hired a secondary or even tertiary collection agency. This indicates that the original creditor and even the first collection agency have given up on you. A collection agency that agrees to take your debt at this time will insist the original creditor pay a generous fee (usually 50%-60% of what is owed). Many secondary and tertiary agencies will take 33-55 cents on the dollar. If the agency hasn't been able to reach you by phone, but knows that you are receiving its letters, it may be willing to take even less.

**Never look too eager to settle.** Just like dating, sometimes it is better to play hard to get! Take plenty of time to reach an agreement. Don't accept the first, or even second, settlement offer. Let them call you to move the deal forward. You cannot expect to reach an affordable settlement if the creditor thinks he has the upper hand. If, for example, you tell a creditor that you really need to get this debt settled to get into your dream home, you can forget any kind of settlement. The creditor will insist on the full balance.

**Remind the creditor that the statute of limitations is approaching** on the debt and they only have a limited time to deal with you. Have the facts ready and be prepared to give the creditor the time line.

**Use the threat of bankruptcy.** It will be in your best interest if the creditor believes that you have very little money and you are teetering on the edge of bankruptcy. You should approach each creditor as though this is their last chance to compromise, and get something out of your debt, before you declare bankruptcy and they get nothing. Be careful when doing this, however. If you accumulate any more debt after stating this to a creditor (they do record all of your correspondence and phone calls, remember?), you may not be able to discharge this debt if you do declare bankruptcy.

**Keep good records!** Keeping good records during your debt settlement process is crucial to your success. Records can make the difference between a good and bad settlement.

- Send all correspondence via registered mail (about \$2/letter). If you send a fax, get a fax confirmation, and follow up with a hard copy in the mail.

- Keep a copy of every letter you send.
- Include a self-addressed, stamped envelope with every letter. (Make it as easy as possible for them to contact you.)
- If you call, keep a log of when you spoke to the agencies, and who. Ask for the name of the supervisor of the person you spoke to, as the turnover rate at collection agencies is high.
- Follow up all phone correspondence with a letter (registered, of course) and/or fax confirmation.

## **Negotiate Your Credit Rating**

You should always push for a Perfect Pay Rating. Your final goal in negotiating your debt settlement is to get the creditor to list your account after the settlement as "Paid as Agreed" or "Account Closed - Paid as Agreed." Anything other than this listing will have a negative effect on your credit report.

If you are dealing with a collection account, you want a complete removal (a deletion) from your credit report, however, NOT a "Paid As Agreed." Any notation on your credit report from a collection agency is considered negative, so even if the listing read, "this person has the best paying record we've ever seen," it would still hurt your score. Much like a well-built blonde in form-hugging jeans: if he returns your admiring gaze with a smile but his front tooth is missing, it completely ruins the overall attractiveness.

### **Reasons why a creditor would agree to change a listing**

Some creditors will tell you that it is illegal to change a listing on your credit report. Hogwash. A creditor can agree to change your listing based on a new contract (the one you will negotiate with them to settle your debts) and if you pay per this new contract, isn't this "paying as agreed?" Remind them of this point.

Creditors make their profits by collecting from their customers, not by reporting negative credit information. Because creditors recognize this, they will often agree to delete any negative listing upon settlement of the debt. You have to realize that creditors won't try to ruin your credit rating as a personal vendetta. It's strictly business! If it pays them to collect from you and restore your rating to perfect, they will do this. Talk to them in terms of money, not principals or morals. Something along the line of "I know you would love to receive the \$3,000 I owe you, but it will not help my credit report if you can't change my rating to 'Paid as Agreed'. All I have is \$3,000 and I will pay it to other creditors who will agree in writing to change my credit rating."

One note here: It is getting tougher and tougher to get credit card companies to change negative history to positive history. Many, these days, will agree to do this only if you pay your entire balance in full, including all interest and penalties.

## **For the advanced and ultra-smooth negotiators**

If you are dealing with an account that has been placed in collections, you now have two negative listings (in most cases) appearing on your credit report – the collection and the original creditor. If the original creditor refuses to deal with you and sends you to the collection agency, it's very difficult to get the original creditor to remove the negative mark. But impossible? No. You need to get the collection agency to agree to remove their listing entirely from your report and have the original creditor change the rating to "Paid As Agreed." At the very minimum, you are within your legal rights to demand the removal of the collection account from your report.

Some collection agencies will tell you they have no power over what the original creditor will do regarding your credit. To some extent, this is true. However, both the collection agency and the creditor want their money. If the collection agency gets paid, it is likely that the creditor will, too, therefore it is to their advantage to cooperate. And baloney if they tell you they don't know how to get in touch with the original creditor. Did the account magically appear on the collector's desk? No. The collection agency was hired. Explain to the collection agency that you will pay them their money if they can get a written agreement from the creditor. Otherwise you will pay a more cooperative creditor with the only money you have left, and they will get nothing.

Remember, though, not all collections result from credit cards. Doctor's bills cannot appear on your report, but collections resulting from these accounts can.

## **If You Must Accept an Imperfect Credit Listing as Part of Your Settlement**

You may find that some of your creditors are willing to hold out longer than you are before agreeing to delete the negative listing from your file. It may seem that they are unwilling to delete the negative listing under any circumstance. Once again, let it be said that sometimes creditors will eventually give you what you want if you speak to the right person, are patient and persistent, and make the right offer. But if you are on a time-line, you have a couple of other options:

**List the account as "Unrated."** Many times, a creditor will agree to list the account as "unrated." What does this mean? It means just that, the account is not listed as good or bad. As far as we can tell at the time of this writing, an "unrated" notation for an account does not negatively impact your score. However, if the listing is unrated, make sure that any lates on the account are removed, as these lates WILL have a negative affect, even if the account is unrated.

**List the account as "Paid" only.** You may counter-offer for the creditor to list the account as "Paid" rather than delete it altogether. This is a true indication of the status of the account and many creditors will concede and agree to this wording. A "Paid" status is still very negative for a collection account or an account that will show "Paid Charge-off" or "Paid Repossession." You should insist that the account show "Paid" only and that all other negative notations (such as "Charge-off," "Repossession," late notations, or

"Collection") are deleted at the same time. A simple "Paid" notation on a regular trade line is neutral and should not hurt your credit.

**List the account as "Settled" only.** You may counter-offer that the creditor simply lists the account as "Settled" rather than delete it altogether. "Settled" is an inherently negative listing but not as negative as "Paid Charge-off." Don't agree to a "Settled" listing until you have exhausted all other possibilities. "Settled" will still trigger a credit denial. You should only agree that the account show "Settled" if all other negative notations (such as "Charge-off," "Repossession," late notations, and "Collection") are deleted at the same time. If you agree to a "Settled" notation, you must continue to work hard to delete the notation through the credit bureau dispute process.

**List the account as "Paid Charge-off" or "Paid Collection" or "Paid was 30-, 60-, or 90-days late."** This will be the creditor's first choice, and your last choice, of what to place on your credit report once you have paid. These notations are almost as damaging as showing the same debt unpaid. It is very common, though, for an account to be deleted (through credit bureau disputes) once it has been paid. The creditor now has no compelling reason to keep the negative listing on your report. For this reason, it is still usually a good idea to settle even if the creditor won't budge on deleting or positively modifying the negative listing.

## **Writing the Offer**

In many cases, once you've agreed to a verbal offer with the credit card company, they will send you the paperwork to clinch the deal. However, it always pays to be proactive, as you don't know exactly when you will be hearing from them.

### **Confirmation of acceptance of verbal offer**

OK, if you've gotten a verbal offer on the phone and wish to accept it, follow up with both a fax and a certified letter. (You can use the Acceptance of Verbal Offer and Agreement to Settle a Debt sample letters in Section 17.)

### **Counteroffer to an offer**

If you have received an offer, either by phone or by mail, you don't have to accept it. You can also counteroffer with a lesser amount and see what they say. In the next chapter, we cover the "typical" debt settlement amounts many lenders seem willing to accept. Use the Counter Offer and Agreement to Settle a Debt sample letters in Section 17. Send them by fax and by certified mail.

### **Unsolicited offers**

An unsolicited offer is one you make to a creditor without discussing the specific offer on the phone. Sometimes this is the only way to get an offer before a creditor. Obviously, in

order for these offers to even be read, it is very important that you have the correct address and fax number.

A good example of an unsolicited offer is included in Section 17: *Unsolicited Offer to Creditor*. Also use the *Agreement to Settle a Debt* letter.

## **Tips on Payment**

Once you have reached an agreement on a settlement amount, be careful about the way you make the payment.

### **Never disclose where you work or bank.**

If you are asked, simply say "no comment." Why? Just in case your settlement falls through and the creditor gets a judgment against you. Knowing where you work or bank makes it easy for them to collect the judgment.

### **Make sure you get the cashier's check from a bank other than your own**

The form of payment is very important, as it protects you from other creditors learning about your financial status and bank account numbers. For this reason, never send a personal check. Get a cashier's check or money order. And don't get it from your own bank. Get it from a different bank, the post office, or a store.

Make sure you keep a copy of your money order or cashier's check! (We can't say it enough: good record keeping is vital.)

### **Never pay your settlement with "Check By Phone"**

"Check By Phone" is an electronic transaction. You give your creditor your checking account number and they deduct an amount from your account. This is the very worst thing you can do. It gives your creditors full access to your checking account (and we've heard more than one horror story where more than the agreed amount was removed from a checking account.)

## **Some Legalities**

### **Can I be sued for the balance once a debt has been settled?**

Yes, depending on the state you live in and how you handled your payment. Some collection agencies will agree to settle with you for far less than you owe, then turn around and hire another collection agency to collect the difference.

However, this is illegal in many states. Once a creditor deposits or cashes a full payment check, even if she strikes out the words "payment in full" or writes "I don't agree" on the

check, she can't come after you for the balance. The states in which this law is enforced are:

Arkansas	New Jersey
Colorado	North Carolina
Connecticut	Oregon
Georgia	Pennsylvania
Kansas	Texas
Louisiana	Utah
Maine	Vermont
Michigan	Virginia
Nebraska	Washington

Some states have modified this rule. In the following states, if a creditor cashes a full payment check and explicitly retains his right to sue you by writing "under protest or without prejudice" with his endorsement, he can come after you for the balance. But those exact words must be used. It is not enough that he writes, "without recourse," communicates with you separately, notifies you verbally or writes on the check that it is partial payment. These states are:

Alabama	Ohio
Delaware	Rhode Island
Massachusetts	South Carolina
Minnesota	South Dakota
Missouri	West Virginia
New Hampshire	Wisconsin
New York	

### **Can debt settlement stop creditor lawsuits the way a bankruptcy filing can?**

No. Sometimes, though, they may choose to drop a lawsuit against you.

### **Tax Consequences of Debt Settlement**

So you've been successful at settling your debts with a creditor, and you think the nightmare is over. Well, not quite. Most people don't know this, but the IRS regards debt forgiveness (paying less than you owe on a debt) as income.

If you are dealing with the original creditor, and you work out a settlement for less than you owe, the creditor may send you a 1099-C at the end of the tax year for the difference. You are required to report the amount listed on the 1099-C as income.

So how bad is this? Well, it depends on your tax bracket. Income tax is beyond the scope of this book, but briefly, your tax bracket depends on how much income you report, after deductions to the IRS.

Just as an example, and we are not using real numbers here, let's say:

1. If you are below the poverty line, you don't pay any taxes.
2. If you make over \$35,000, you pay 20% taxes
3. If you make over \$50,000, you pay 35% taxes
4. If you make over \$70,000, you pay 39% taxes

Let's also say that you get a \$5,000 break in your debt settlement. The creditor sends you a 1099-C for \$5,000 at the end of the year.

You would pay:

1. No extra taxes if your income is below the poverty line
2. \$1,000 in additional taxes if you are in the 20% bracket (hey, you are still saving \$4,000 overall by negotiating)
3. \$1,750 in additional taxes if you are in the 35% bracket
4. \$1,950 in additional taxes if you are in the 39% bracket

Consider tax consequences when negotiating a debt.

## **SECTION 12: Bankruptcy**

### **Can YOU Avoid Bankruptcy?**

You should consider your alternatives long and hard before embracing bankruptcy as a solution to your credit woes. Remember that there is no easy way to get out of debt—despite what those slick ads might suggest. If you have already carefully considered settling your debts with your creditors (covered in Section 11) and using a credit counseling agency and none of these strategies will work for you, you may be a candidate for bankruptcy.

After arming yourself with the following facts, talk to a lawyer who is familiar with the bankruptcy law in your state.

### **Chapter 7 Bankruptcy**

Chapter 7 bankruptcy is a liquidation proceeding. The debtor turns over all nonexempt property to the bankruptcy trustee who then converts it to cash for distribution to the creditors. The debtor receives a discharge of all dischargeable debts. The most common reasons for consumer bankruptcy are:

- Unemployment;
- Excessive medical expenses;
- Seriously over-extended credit;
- Marital problems; and
- Other large unexpected expenses.

### **Chapter 7 Eligibility**

To qualify for a Chapter 7 bankruptcy, you must:

- Reside or have a domicile, a place of business, or property in the United States or a municipality;
- You must not have been granted a Chapter 7 discharge within the last six years or completed a Chapter 13 plan; and
- You must not have had a bankruptcy filing dismissed for cause within the last 180 days. It must not be a “substantial abuse” of Chapter 7 to grant the debtor relief. Generally speaking, if after you pay the monthly expenses for necessities there is not enough money to pay the remaining monthly debts, then granting a discharge would not be an abuse of Chapter 7.

### **How it Works**

The underlying policy of bankruptcy law is that the honest debtor who is in debt beyond his ability to repay should be given a fresh start through the discharge of debts in a



bankruptcy proceeding. Not all debts are dischargeable. Generally speaking, the following debts will not be discharged:

- Taxes;
- Spousal and child support;
- Debts arising out of willful misconduct and or malicious misconduct by the debtor;
- Liability for injury or death from driving while intoxicated;
- Non-dischargeable debts from a prior bankruptcy;
- Student loans; and
- Criminal fines, penalties, and forfeitures.

Secured debts will be discharged. However, expect the creditor to take the necessary legal steps to repossess the property. In most cases, if the debtor's equity interest in the property is exempt, the debtor may retain the property by redemption or reaffirmation.

You can file for bankruptcy yourself, but it is wise to use an attorney. There are a multitude of forms to fill out—as many as 30 to 60 pages in your petition, schedule, and other papers. You must follow local and federal bankruptcy court rules in completing the forms, which requires an understanding of both bankruptcy law and local state law to enter the information correctly and accurately. The forms have to be typed, and a certain number of copies must be included with the filing. Today, most attorneys use a computer system to prepare these forms because of their complexity and voluminous nature.

About 30 to 40 days after you file the bankruptcy, you will have to attend a hearing presided over by the bankruptcy trustee. This hearing is called the “First Meeting of Creditors.” At this hearing, the trustee will ask you questions under oath regarding the content of your bankruptcy papers, assets, debts, and other matters. After the trustee is finished, your creditors will be permitted to question you. Not to worry. (You decided to use an attorney, right?) Your attorney will help you prepare for the hearing and will be there to represent you.

When you discuss your situation with your attorney, you will need to be prepared to discuss all areas of your case. This includes each and every debt you owe and creditor you have. It is very important to list all your creditors in your bankruptcy. Sometimes, after your hearing is over, various creditors will approach you to discuss the status of secured property or your desire to retain a credit card. Your attorney will negotiate with them, with your knowledge and approval.

If you forget to list a creditor on your bankruptcy papers, you are permitted to file an amendment to your schedules up to a certain time before discharge (this is a hassle after the fact, so be thorough and list everything when you prepare your schedules). If the amendment is filed in a timely manner, the omitted creditor is added to the bankruptcy. It is perjury to intentionally omit a creditor. However, if you do not know that a creditor exists and there are no assets to pay your creditors, the debt will be discharged anyway.

You normally will not need to return to court after the First Meeting of Creditors. However, if a creditor files a motion or an adversary action, you may have to return to court. This is the exception and only your attorney can determine if this is likely to happen. After you file your bankruptcy, the court will automatically issue the discharge 60 to 75 days after the First Meeting of Creditors.

In the unfortunate event that you should need to file bankruptcy again, you must wait at least six years to re-file. If your bankruptcy was dismissed, you usually must wait 180 days to re-file.

### **What Chapter 7 Will and Will Not Do**

Chapter 7 bankruptcy **will stop a wage attachment and most civil judgments.**

Chapter 7 bankruptcy **will stop bill collectors from calling.** Debt collection efforts and foreclosure is halted. Once a creditor or bill collector becomes aware that you have filed for bankruptcy protection, all efforts to collect the debt must stop. After your bankruptcy is filed, the court mails a notice to all creditors listed in your schedules. This usually takes a couple of weeks. If this is not soon enough, ask your representative to inform the creditor immediately. If a creditor continues to use collection tactics after having been dutifully informed of your bankruptcy, the creditor may be liable for court sanctions and attorney fees for this conduct.

Chapter 7 bankruptcy **will stop a foreclosure.** However, a home is an asset usually secured by a deed of trust. The lender is entitled to apply to the court for relief from the automatic stay (the order preventing creditor action by virtue of the bankruptcy). Depending upon several factors, you may be able to prolong a foreclosure until you have received your discharge from bankruptcy. You usually have to make a deal with the lender to keep a home that is in foreclosure.

Chapter 7 bankruptcy **will stop an eviction or “unlawful detainer” action.** However, this will only delay the inevitable. The owner is entitled to possession of his property. At best you will be able to remain in the property until you have received your discharge from bankruptcy or the landlord obtains an order from the bankruptcy court. If the only reason you filed the bankruptcy is to stop an eviction, this may be considered an abuse of Chapter 7. If the bankruptcy court finds that this is true, the court can immediately dismiss the bankruptcy and impose other legal and monetary sanctions on you. Also, in California, laws have been passed favoring the landlords. Apparently, landlords in California can evict even when a tenant files a bankruptcy.

Chapter 7 bankruptcy will remove a lien. Under some circumstances, a special motion can be filed to remove certain liens once the bankruptcy proceedings have started. It will take a bankruptcy court order to remove them. This is a complicated area of the bankruptcy law and an attorney should be consulted. However, the following are guidelines for removing tax liens. You can discharge (wipe out) debts for federal income taxes in Chapter 7 bankruptcy only if all five of these conditions are true:

1. The IRS has not recorded a tax lien against your property. If all other conditions are met, the taxes may be discharged, but even after your bankruptcy, the lien remains against all property you own, effectively giving the IRS a way to collect.
2. You didn't file a fraudulent return or try to evade paying taxes.
3. The liability is for a tax return actually filed at least two years before you filed for bankruptcy.
4. The tax return was due at least three years ago.
5. The taxes were assessed (you received a notice of assessment of federal taxes from the IRS) at least 240 days (eight months) before you filed for bankruptcy (11 USC. §§523(a)(1) and (7)).

Chapter 7 bankruptcy **will remove dischargeable community debts** if you are divorced. However, you should discuss this with your family law attorney to understand the other implications of the filing of a bankruptcy during the pendency of a dissolution action (divorce case).

Also, remember that if you are discharged from community debts, your spouse becomes responsible for the entire balance owing on the debt. Put another way, the debt does not go away; it simply shifts from you to your ex spouse. Mmmm...revenge?

Chapter 7 bankruptcy **will not require your spouse to file bankruptcy**. In some cases where only one spouse has debts, or one spouse has debts that are not dischargeable, it might be advisable to have only one spouse file.

Chapter 7 bankruptcy **will not cause you to lose your job**. Bankruptcy laws prohibit discrimination based upon a debtor filing for protection under the bankruptcy laws. Also, under normal circumstances, unless your employer is a creditor, your employer will not know.

Chapter 7 bankruptcy **will not cause you to go to jail**. There are no debtor's prisons in the United States.

### **How Chapter 7 Affects Personal Property, Real Property, and Other Assets**

All property of the debtor at the time of the bankruptcy filing (and certain other property to be received in the future) becomes the property of the bankruptcy estate once bankruptcy is filed. This means that the bankruptcy trustee will take control of this property for purposes of satisfying the creditors. However, there is certain property that is either excluded or exempt that the debtor will be able to keep. Property or asset exemptions are determined based upon your situation, income, and the laws of your state. The best way to determine which property you may keep requires a detailed analysis of your situation. You need a good lawyer.

As for **real property** (including your **house**, if you own it), in many states you may exempt up to \$100,000 in equity dependent upon which exemption scheme is selected and your circumstances. When calculating your equity, you should use a value that is

based upon a forced liquidation as opposed to the best selling conditions to arrive at a value for your home. Once you know the value, subtract the amount owed, plus selling and transfer costs, from the value of the property to calculate the equity. In depressed markets, liquidated properties often are valued at less than you think the property is worth.

In California, you are permitted exemptions for a variety of **personal property**. This includes automobiles, household furnishings and personal effects, jewelry, tools of the trade, retirement plans, unmatured life insurance, personal injury awards, earnings, animals, and other miscellaneous property.

Again, state laws vary. In other states, depending upon which exemption scheme is selected, you may keep your **automobile** if your equity is equal to or less than the allowed exemption. Generally speaking, you may exempt as little as \$1,200 or as much as \$9,100. Using the Kelly Blue Book or a comparable guide to calculate your equity, subtract the amount still owing from your Kelly Blue Book value to determine the amount of equity.

Most courts understand that you need a car to earn the money that will get you back on your feet after bankruptcy. Apply rules of common sense here. If you own vintage cars that are free and clear and worth thousands of dollars, you probably are not going to be able to keep them. If, on the other hand, you have a car worth \$10,000 and you owe \$8,000 on it, you most likely will keep it. Again, the need to talk to a good lawyer should be evident. Most leased vehicles have no equity and, therefore, are entirely exempt. If you owe money on your car, or if it is leased, you must still make the payments. In those instances, you will have to redeem or reaffirm the property to keep it. And in some circumstances, your representative can re-negotiate the loan or the lease to get a more favorable deal for you.

Under some circumstances, you may even keep your **credit cards**. Many factors must be considered including the credit card balance at the time of the bankruptcy, what the credit card company is willing to do, and your ability to pay the present and future credit card debt.

### **How Chapter 7 Affects Your Credit**

How is your credit rating after a Chapter 7 bankruptcy? It sucks, plain and simple.

The bankruptcy is a judgment and will be listed on your credit report for a period of up to 10 years after the discharge.

However, you can reestablish credit and be back in "A" credit two to four years after the discharge of bankruptcy. For a while though, expect to pay through the nose in interest and fees. There is a whole new mortgage industry springing into action, loaning to people with less-than perfect (or even rotten) credit.

Getting new credit cards and good car loans will be a lot tougher after a bankruptcy. If you open up new lines of credit after the bankruptcy (it is recommended that you obtain secured credit cards) and maintain perfect credit for two to three years you'll be back to "A" rates on mortgages (especially FHA loans).

It will be easier to get a loan on a home than on a credit card. Why? The creditor gets the home if you default on a mortgage while the issuer of a credit card can wind up with nothing (even if you don't or can't file a bankruptcy).

You basically can't get a regular loan for three years. (It takes between six months to a year to file and have your debts officially dismissed by the courts, plus two more years to reestablish your credit.) It may be tough to get an equity loan on your house until the bankruptcy is off your credit report.

## **Chapter 13 Bankruptcy**

Chapter 13 is a section of the Bankruptcy Code that helps qualified individuals, or small proprietary business owners, who desire to repay their creditors but are in financial difficulty. It is often referred to as a "mini Chapter 11" because you usually repay something to your creditors while you retain your property and make payments under a plan.

The main purpose of a Chapter 13, as opposed to a Chapter 7, is to enable a debtor to retain certain assets that otherwise would be liquidated by a Chapter 7 trustee. In most cases, you can keep your home and your car under either plan (provided your equity does not exceed certain limits). However, under Chapter 7, you wouldn't be able to keep your rental properties, those antique guns, etc. (The goal of most Chapter 7 bankruptcies is to discharge your existing debts and allow you a "fresh start" on your finances; in other words, once your discharge is granted, you no longer need to repay the debts that were incurred before you filed your bankruptcy). Under a Chapter 13, however, you repay most or all of your debts before your slate, so to speak, are wiped clean. Because you repay your debts, you gain certain advantages over a Chapter 7. These include keeping all of your property and a better credit situation after completing the process.

### **Chapter 13 Eligibility**

Only an individual with regular income who owes, on the date the petition is filed, less than \$250,000 in unsecured debt and \$750,000 in secured debt can qualify for Chapter 13 bankruptcy. These debts must also be non-contingent and liquidated, meaning that they must be for a certain, fixed amount and not subject to any conditions.

## **How it Works**

Chapter 13 protects individuals from the collection efforts of creditors, permits individuals to keep their real estate and personal property, and provides individuals the opportunity to repay their debts through reduced payments. Another benefit is that your Chapter 13 bankruptcy remains on your credit report for a shorter period of time (7 years) than a Chapter 7 (10 years), so it takes less time to rebuild your credit. You also may be able to discharge debts in a Chapter 13 that would be non-dischargeable under other Chapters (for example, fraud judgments).

The size of your monthly plan payments is determined by the amount you can afford to pay after paying necessary living expenses (i.e., insurance, mortgage payments). Typically, the plan payments last for 36 months, unless additional time is requested, but in no event will they last more than 60 months. Therefore, if your payment analysis shows, for example, that you can afford to pay \$200 per month (above and beyond your normal living expenses), you would pay that each month to the Chapter 13 trustee, who would disperse it pro rata among your creditors. At the end of 36 months, you are discharged from all dischargeable unsecured debts, regardless of how much your creditors have received. Be conscientious with your payments, though, because if you miss any payments at all that are due under your plan, the court will dismiss your case.

In addition to your plan payments, you must stay current with any ongoing obligations that you have to secured creditors, such as your mortgage. Chapter 13 (or any bankruptcy chapter for that matter) only affects debts that you owe on or before you filed the bankruptcy. Therefore, for mortgages and other secured debts your plan payment goes to pay any arrearages that exist on the date you file. You can repay that arrearage over the life of the plan, but you must stay current from the filing date forward with any mortgage payments, etc.

Secured debts (your mortgages) must be repaid in full, but Chapter 13 enables you to cure the defaults (reinstate the loans) over 36 months (or up to 60 months with creditor consent and court approval). You also have the ability to eliminate junior liens from your real property (your mortgages) under certain circumstances and restructure mortgage and other payments.

## **How Chapter 13 Affects Your Credit**

A Chapter 13 bankruptcy will appear on your credit report for seven years after you file. (The credit bureaus can technically report a Chapter 13 for 10 years, but currently it is their policy to only report it for 7 years). This means that when all is said and done, and you've completed the three years of bankruptcy, it will appear on your credit report for only four more years. This is a big advantage over a Chapter 7. Your credit will definitely be less damaged than had you completed a Chapter 7.

The usual limitations will apply until the bankruptcy disappears from your report. You will not get as high a credit limit as you once had, nor will you be able to borrow a large sum of money. But getting some credit (such as a secured credit card) shouldn't be that difficult and you will be able to rebuild your credit over time. What you will probably face is higher interest rates, required higher down payments, more points, etc., but you will be treated more leniently than a person with a Chapter 7. For instance, mortgage lenders will give you the benefit of the doubt, giving you preferred credit status over those filing Chapter 7.

## **SECTION 13: Debt Validation**

### **Debt Validation—The Ultimate Secret Weapon**

If you have lots of collection accounts on your credit report, there is a great new secret weapon to use against your creditors—all legal and pretty and everything. A little something called “debt validation.” This is particularly handy if you are dealing with a collection agency. Under the Fair Debt Collection Practices Act (FDCPA), if a collection agency opens an account with the intention of collecting a debt from you, it is required to notify you in writing, using specific language and information. You, the consumer, have 30 days to dispute the debt and question its validity. However, even if the 30 days has passed, it’s unlikely that they have proof that you received a letter from them. Technically, you can request debt validation from a collection agency at any time.

In addition, the FDCPA specifically spells out the course of action required by a “creditor.” If they don’t follow these precise steps, they must stop all efforts to contact and collect monies from you.

The specific section of the FDCPA (Section 809, Validation of debts [15 USC 1692g] stipulates:

(b) If the consumer notifies the debt collector in writing within the 30-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.

What kind of information will provide adequate validation? A computer printout listing the bill is not sufficient to validate a debt.

The agency must validate the debt to your satisfaction. The following pieces of information must be provided to you in order for the collection agency to validate your debt:

- Agreement with your client that grants you the authority to collect on this alleged debt.
- Agreement bearing the signature of the alleged debtor wherein he agreed to pay the creditor.



- The complete payment history (starting with the original creditor) on the account so that the exact amount of the debt may be determined.

So, if a creditor can't verify a debt:

- They are not allowed to collect the debt;
- They are not allowed to contact you about the debt; and
- They are also not allowed to report it under the Fair Credit Reporting Act (FCRA). Doing so is a violation of the FCRA, and the FDCPA states that you can sue for \$1,000 in damages for any violation of the act. The FDCPA also states that you can sue in federal or state court. So if you have them on five violations, then you have damages of \$5,000. Small claims court, anyone? (See Section \_\_\_\_\_ on how to sue your creditors.)

## Original Creditor vs. Collection Agency

The FDCPA does not cover collection tactics employed by the original creditor, meaning the bank that issued you the credit card or the loan company who gave you an auto loan. It was written to protect the consumer from collection agencies. Let's look at the definition of a "collector" as defined by the FDCPA:

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.

**Important Note:** As indicated in numerous examples of case law, any attorney who acts on the behalf of an original creditor is also a collection agency and is subject to the laws of the FDCPA.

## Step-by-Step Process

Follow these steps in seeking a debt validation:

1. Send a letter requesting validation to the collection agency. (Sample letters are included.) If you don't know the address, here are some online resources to help you find it:

a) [www.residentagentinfo.com](http://www.residentagentinfo.com)

b) [www.bbb.org](http://www.bbb.org)

2. Wait 30 days.

3. If they haven't sent you satisfactory proof, as outlined above, send a copy of the receipt for your registered mail, a copy of the first letter you sent and a statement that they have not complied with the FDCPA and are now in violation of the act. (Use the "follow up"

letter as a template.) Tell them they need to immediately remove the collection listing from your credit report or you are going to file a lawsuit because they are in violation of the FDCPA, section 809 (b).

4. Wait 15-20 days. They will either remove it or not respond.
5. If they do provide complete debt validation per the requirements stated above, check to see if licensing is required in your state. If you believe they are not licensed and licensing is required in your state, write them another letter and tell them they are in violation of your state's collection laws and are subject to prosecution and fines. (You'll have to cite your state's fines and procedures here. This is a last ditch effort, but has worked in some cases.)
6. Typically, your work will stop here, as most collection agencies will bow down to your demands and send you a letter agreeing to remove the listing. Now all you need to do is send a copy of the letter to all three credit reporting agencies.

If the collection agency did not agree to remove the listing, then you need to move on to the next steps:

1. File a lawsuit in small claims court against the collection agency on the basis of violating the FDCPA.
2. Have the papers served to the collection agency. (You can find a paper server on the Internet for about \$25. Here is a good link: <http://www.guaranteedsubpoena.com/rules.htm>.) In the meantime, in a parallel effort with your lawsuit against the collection agency:
  - a) Dispute the collection if it appears on your credit report.
  - b) If the credit bureaus come back to you and say the collection is "verified," you have just been provided proof of a violation by the collection agency. Since they are not allowed to pursue collection activities after you request debt validation, they cannot report the collection on your credit report. In the opinion of the Federal Trade Commission, reporting a collection on a credit report is collection activity. Continue on with your dispute with the credit bureau as outlined in Section 7, by requesting method of verification of the credit investigation, etc
  - c) If the credit bureaus are refusing to work with you, then it's time to sue them as well. File a small claim suit in court on the credit bureaus, on the basis of defamation of character, violations of the FDCPA or FCRA. (Refer to Section 11 to see if you can find anything they have done wrong.) Credit bureaus are usually eager to stay out of court, so if you have them on anything, they will usually call to settle with you.

I have heard of several successful students using debt validation on their credit reports.

## SECTION 14: Vacating A Judgment

### **Can a Judgment Be Overturned?**

Filing a motion to dismiss a judgment is like filing an appeal on the outcome of a jury trial. If the outcome was not fair, and you have good reason why the court should overturn its prior ruling, you should file a motion. Don't be intimidated by the thought that you are challenging a court ruling. It happens all the time.

As with many collection agencies, many people who file lawsuits to collect money from you in court didn't follow the law. You may be asking yourself why the judge didn't know about this improper deviation. As in most professions, judges tend to specialize in one type of case. For the same reason that you can't expect a heart surgeon to know the best psychiatric medications to prescribe to a patient with schizophrenia, a judge doing small claims or injury lawsuits may not be intimately familiar with consumer law. Sure they know the basics, but one person can't know everything. Before deciding on a case, most judges need to look up and study existing statutes and case rulings. In addition, if the person who sues says they followed the correct procedure and the defendant or his lawyer does not dispute it, it's a sure bet they were given the benefit of the doubt.

Another thing to look out for: even if the person suing you followed all the right court procedures, you can still win on technicalities. The two biggest reasons a judgment is "won" are: A) the defendant failed to respond to the court summons with the proper paperwork in the allowed period of time, and B) the defendant failed to appear for their court date. This is called winning by default.

If you receive a judgment or a writ of restitution and you believe you had a good reason for not responding to the eviction summons or appearing at the "show cause" hearing, there still may be grounds for asking the court to vacate the judgment. If the court agrees that you may have had good reasons for not responding or appearing, the court may decide to set a hearing on your motion to vacate the judgment.

### **Definitions**

A **judgment** is the actual court decision stating that the person suing is in the right. It issues the method to "right the wrong," such as fines, the actions you need to take to correct the violation, or the amount of money you need to pay the plaintiff.

A **writ of restitution** is generally used only by landlords. It is basically a court order, in writing, that would be given to a sheriff to evict you if your landlord was trying to get you to move based on non-payment. You don't need to worry about this document if you are not being sued by your landlord.

**Vacate** basically means dismiss.

The **plaintiff** is the person suing you.

The **defendant** is the person being sued (you).

## **Prepare Your Motion and Declaration to Vacate**

You must prepare a Motion and Declaration to Vacate Judgment and an Order to Show Cause. A sample document is included in Section 17, which you can use as a template to write up your motion. This document tells the court why the judgment against you should be vacated. First, you need to identify the case by name and court reference number and all the persons involved in the judgment.

Next, explain your reasons for bringing the motion. State your "procedural defenses," that is, the good reason(s) why you did not respond to the summons and complaint on time or appear at a "show cause" hearing. For example:

- I was not served with a summons and complaint – you need to check your state laws here. Some states say that a non-certified letter delivered by the US Postal service is all that is required to properly serve a complaint. Most states, however, require that you be served in person or at least get your summons sent certified, return requested mail. Here is a good link to double check your state and county procedures: [http://www.findlaw.com/10fedgov/judicial/district\\_courts.html](http://www.findlaw.com/10fedgov/judicial/district_courts.html)
- I responded to the summons and complaint in time, but a judgment was issued anyway without a hearing.
- I was not able to answer the summons and complaint or appear at the show cause hearing because...

In the same space, also tell the court about your defense to the judgment (why the case would have been dismissed had you shown up in the first place). For example:

- The collection agency never responded to my request for validation, therefore never providing proof that the debt was mine under the FDCPA.
- The amount of the debt exceeded the state's usury interest limits.

Please note that the court will only respond to violations of existing laws. They won't accept reasons like: "My insurance company was supposed to pay this debt and never did, therefore I shouldn't have to pay this medical bill."

## **File the Paperwork**

Most likely, you will have to file your motion at the same court, which granted the judgment in the first place. This means that if the judgment was granted in Anchorage, Alaska, and you now live in Miami, Florida, you will have to fly to Alaska to both file the paperwork and to attend the court trial. However, this is not true in all cases. One reader was able to file the motion to vacate out of state. She included a sworn statement stating that the judgment holder and the judgment holder's attorney had been notified of

the motion to vacate, all through the mail. Call the court in which the judgment was granted and find out if this is an option for you.

Go to the courthouse with your typed document and tell the court clerk that you are filing a motion to vacate a judgment. There may be additional forms to fill out at the courthouse, and there will probably be a nominal filing fee. The clerk should know exactly what needs to be done with your paperwork, and can answer all of your questions and even help you fill out the forms.

Once your paperwork is in order, the court will notify you of the upcoming court date. The original plaintiff in the lawsuit (now the defendant in your motion to dismiss – are you confused yet?) will typically have 35 days to respond.

### **Notify the Plaintiff**

In some cases, once the paperwork is filed the court will notify the plaintiff and/or plaintiff's attorney. Be sure to ask if the court will serve notice or if you need to, as serving the notice of summons is crucial to winning your case. If it is your responsibility to serve notice, you can hire a third-party professional service company for a nominal fee (typically around \$35). Here's a good link to find a service company:  
<http://www.guaranteesubpoena.com/rules.htm>.

### **What If They Offer to Settle Out of Court?**

Very often the original plaintiff in your lawsuit will come back to you and offer to vacate the judgment, especially if they blatantly flouted the laws in winning the case in the first place and have no proof, say that you were properly served, or that they violated the FDCPA, etc.

If they offer to settle out of court, you should demand that they themselves file paperwork to dismiss the lawsuit. Also demand that they notify any collection agencies they may have hired to collect money and notify the credit bureaus of the "mistake." It is also crucial before accepting any settlement offer (in writing, naturally) that they send you copies of any paperwork received from the courts about the judgment vacation or dismissal.

### **What Happens in the Court Room?**

In the best of all possible scenarios, the original plaintiff will not show up for the hearing to dismiss and you will win by default. If this happens, you shouldn't have to present anything to the court and should receive your dismissal automatically, especially if the original plaintiff never responded in writing to the summons.

In the second best of all possible worlds, they will show up for the hearing but be unable to disprove your reason for requesting the dismissal:

- They are unable to show proper documentation that you were properly served.
- They are unable to show that the debt was legal in the first place (unable to show what the correct debt amount should be, if a contract existed in the first place, etc.)

This means, of course, that you should have good documentation on the case and have it available to present in court. See Section 11, Suing your Creditors, for court tips.

### **What Happens When You Win?**

You should receive a court document showing that the case was dismissed. Send copies of this document to any collection agency that's contacted you about the case and to the credit bureaus so they will remove any mention of the judgment from your credit report. Even though you demanded that the defendant do this, it only takes a few stamps and a few minutes of your time to insure that your credit history gets corrected promptly.

## SECTION 15: Suing Creditors, Collection Agencies And Credit Bureaus Who Violate Your Rights

### Will This Really Work?

Absolutely. It's the law. If you can prove any violations, it is pretty cut and dried that you will win. The amount of the fines and your right to them is spelled out explicitly. Most collection agencies—and certainly the credit bureaus—are unprepared for such attacks, and will usually settle with you to avoid court.

You know the old sayings, “Money talks” and “Vote with your dollars”? Well, most companies, the credit bureaus and creditors included, are not going to change their ways unless it is in their best interest to do so. All of these companies have stockholders to report to, so if one of their practices is costing them a better bottom line, you better believe they will act to change their ways. One of these ways is for you, the consumer, to take legal action against these companies when your rights have been violated.

### I'm Pretty Intimidated by the Court System

In the majority of cases, you can take your case to small claims court, which is designed to serve the consumer. In many states and counties, lawyers aren't even allowed to represent clients in small claims. Filing a small claims suit is fairly easy, and the filing fee ranges between \$20 and \$60. You don't need to know fancy lawyer speak, just be able to present the facts backed up by documentation and a little knowledge of the law.

The table that follows lists all of the most common offenses committed by the credit bureaus and collection agencies. If you go into court armed with documentation, a copy of the FCRA, the FDCPA and copies of the right court ruling and FTC opinion letters, you will most likely win.

### So Whom Can You Sue and What Can You Sue For?

<u>Who</u>	<u>Why</u>	<u>Precedent/Law</u>	<u>Fine</u>
Creditors if they report your credit history inaccurately	Defamation, financial injury	US Court of Appeals, Ninth Circuit, No. 00-15946, Nelson vs. Chase Manhattan	Extent of damages incurred by the wronged party as deemed by the courts
Creditors if they pull your	Injury to your credit report	FCRA Section 604 (A)(3)	\$1,000

credit file without permissible purpose	and credit score		
Credit bureaus if they refuse to correct information after being provided proof	Defamation, willful injury	FCRA section 623 Cushman v. Transunion Corporation US Court of Appeals for the Third Circuit Court Case 115 F.3d 220 June 9, 1997, Filed (D.C. No. 95-cv-01743)	Extend of damages incurred by the wronged party, as deemed by the courts
Credit bureaus if they reinsert a removed item from your credit report without notifying you in writing within 5 business days.	Consumer protection afforded by the FCRA	FCRA section 611 Part (A) (5)(B)(ii)	\$1,000
Credit bureaus if they fail to respond to your written disputes within 30 days (a 15 day extension may be granted if they receive information from the creditor within the first 30 days)	Consumer protection afforded by FCRA	FCRA section 611 Part (A)(1)	\$1,000
Creditors or collection agencies, and credit bureaus if they try and "Re-age" your	Consumer protection afforded by FCRA	FCRA Section 605 (c) Running of the reporting period	\$1,000



account by updating the date or last activity on your credit report in the hopes of keeping negative information on your account longer.			
Collection agencies if they do not validate your debt yet continue to pursue collection activity (i.e., file for judgments, call or write)	Consumer protection afforded by FDCPA	FDCPA Section 809 (b), FTC opinion letter <i>Cass from LeFevre</i>	\$1,000
Collection agencies if you have sent them a cease and desist letter and they still call you	Consumer protection afforded by FDCPA	FDCPA Section 805 (c)	\$1,000
Collection agencies if they have not validated your debt and they still continue to report to the credit bureaus	Consumer protection afforded by the FDCPA	FDCPA Section 809 (b), FTC opinion letter <i>Cass from LeFevre</i>	\$1,000
Collection agencies if they: -Cash a post-dated check before the date on the check -Cost you money by	Consumer protection afforded by FDCPA	FDCPA Section 808	\$1,000

making you accept collect calls or COD mail -Take or threaten to take any personal property without a judgment			
Calls you after 8PM at night or before 9AM	Consumer protection afforded by the FDCPA	FDCPA Section 805 (a)(1)	\$1,000
Calls you at your place of employment if the debt collector knows or has reason to know that your employer prohibits the consumer from receiving such communication	Consumer protection afforded by the FDCPA	FDCPA Section 805 (a)(3)	\$1,000
Calls any third party about your debt (i.e., friends, neighbors, relatives, etc.) However they can contact your attorney, a consumer reporting agency, the creditor, the attorney of the creditor, or the attorney of the debt collector	Consumer protection afforded by the FDCPA	FDCPA Section 805 (b)	\$1,000
The collection agency can not use any kind of	Consumer protection afforded by the	FDCPA Section 806	\$1,000

harassment or abuse*	FDCPA		
Collector cannot claim to garnish you wages, seize your property or have you arrested**	Consumer protection afforded by the FDCPA	FDCPA Section 807	\$1,000
Collector must bring action against you in the county which you lived when you signed the original contract for the debt or where you live at the time when they file the lawsuit	Consumer protection afforded by the FDCPA	FDCPA Section 811 (a)(2)	\$1,000 Also a good grounds for getting a judgment vacated
Collection agency tries to collect after the statute of limitations for the debt has passed. (Threat to take any action that cannot legally be taken or that is not intended to be taken)	Consumer protection afforded by the FDCPA	FDCPA Section 811 (5)	\$1,000

\* (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person. (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. (4) The advertisement for sale of any debt to coerce payment of the debt. (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) Placement of telephone calls without meaningful disclosure of the caller's identity.

**\*\*** If the collection agency gets a judgment against you, then they will be able to garnish your wages and seize property, but until that time, no.

## **How Do You Prove Harassment?**

Harassment by a collection agency is a tough thing to prove, as most collectors do this by phone and there is no written documentation. If a bill collector violates the FDCPA, try and see if you can get the illegal behavior on tape.

### **Taping phone conversations**

There are important questions of law that must be addressed when considering whether or not to record a phone conversation with anyone. There are both federal and state statutes governing the use of electronic recording equipment. The unlawful use of such equipment can give rise not only to a civil suit by the “injured” party, but criminal prosecution. You should carefully review the following paragraphs before attempting to tape a phone call.

A majority of the states and territories have adopted wiretapping statutes based on the federal law. Thirty-eight states and the District of Columbia permit an individual to record a conversation to which they are a party without informing the other party that they are doing so. These laws are referred to as “one-party consent” statutes, and as long as you are a party to the conversation, it is legal for you to record it. In this case, the laws generally referring to electronic recording of a conversation, but in the majority of the cases, also cover eavesdropping.

Twelve states require, under most circumstances, the consent of all parties to a conversation. Those jurisdictions are California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania, and Washington. These laws are sometimes referred to as “two party consent” laws, which is a bit misleading: if there are more than two people involved in the conversation, all must consent to the taping.

Just in case you’re trying to be a super sleuth and can videotape your encounters with collection agencies or creditors, you should also be aware of the laws governing video recording. Twelve states have laws outlawing the use of hidden cameras in private places: Alabama, California, Delaware, Georgia, Hawaii, Kansas, Maine, Michigan, Minnesota, New Hampshire, South Dakota, and Utah.

### **If you live in a state which forbids “secret” phone taping**

A logbook with notes on all conversations with your creditors usually impresses judges. Make a note of each time you call or are called by a creditor. Note the phone number, date, time of day, the people you talked to, the company called and brief notes on the conversation. Make special notes of any harassments, threats and demands that you think are in violation of your rights. Exact quotes are highly beneficial.

In addition to impressing the court, this will also help you keep your own sanity!  
Trying to keep track of multiple creditors is extremely difficult!

## **Filing Suit**

### **Small claims court is quick and easy**

Most states allow you to recover between \$3,000 and \$7,000 in damages in small claims court. Some states allow larger sums. (For example, Tennessee allows up to \$15,000.)

Include all the pertinent facts and be sure to attach documentation as mentioned in the sample. Go to the small claims courthouse with your typed document and tell the court clerk that you are filing a Basis for Lawsuit. There may be additional forms to fill out at the courthouse, and there will probably be a nominal filing fee. The clerk should know exactly what needs to be done with your paperwork, and can answer all of your questions and even help you fill out the forms.

Taking legal action will help to bring about the change that is necessary in the way these companies operate. But more importantly for you, it will resolve the matter quickly. You also stand to be compensated for your frustration.

### **Suing in other courts**

While small claims is quick and easy, you may want to consider suing in district, superior or federal court for the following reasons:

- You are limited to the amount allowed in your state. If the basis of your claim is the FDCPA, your actual damages may be more than small claims allows.
- Another disadvantage is that, some small claims courts do not allow you legal representation should you need it.
- In addition, if you are suing with the FDCPA as the basis of your lawsuit, you can collect attorney fees as part of the settlement, which may entice a lawyer to take your case on contingency. Taking a case on contingency means that a lawyer only collects money from you IF you win in court. If you lose, you are not out any money.
- And still another is that some (I don't want to insult anyone here) small claims court judges are unknowledgeable about the FCRA and FDCPA laws and case rulings. Not that they are bad judges, it's just not their area of expertise. They are used to disputes with housing contractors, landlords and property disputes, not federal case law.

### **Can I only sue companies in my state?**

Typically, the answer is yes. Some small claims courts won't even allow paperwork to be filed if the other party is out of town. Others may allow you to file in the state in which a contract was signed or where personal injury occurred.

However, as long as a company has a registered agent in your state, you may sue them. A registered agent is an entity (physical office or person who represents the company in your state). To find the registered agent in your state visit:

- The Better Business Bureau -<http://www.bbb.org>
- <http://www.residentagentinfo.com>

### **How much does it cost?**

States have different filing fees, but generally the cost is between \$10 and \$50, with some businesses paying a slightly higher fee.

### **Serving the notice**

In order for the judgment to be binding, the party being sued must be properly served. Depending on your state, either the court will serve the notice, or leave it up to you. It is vital to make sure the party is served properly.

If your state makes it your responsibility to serve the party you are suing, ask for a list of the qualified people or services you can use to serve the paperwork.

### **What if I want to hire a lawyer, or at least consult with one, before going to trial?**

The problem is that many lawyers aren't familiar with this kind of law and many only practice in a single state. But you can try it.

Where do you find a lawyer? The following link is an excellent resource for finding a lawyer in your area:

- <http://www.naca.net./resource.htm>

## **SECTION 16: The Importance of Documentation**

This information is as vital as everything else in this book, so it gets its own dedicated section. Your documentation can be the difference between failure and success in any effort you make to clean up your credit. And in the event you decide to sue your creditors, it can be worth money!

Take these four little tips to heart and they will serve you well:

### **Keep a detailed phone log of all conversations.**

Track the date, time, the name and title of the person you spoke with, and the details of phone conversations. It will help to jog your memory in the future, provide you with the details you need when you put the conversation in writing, and it could prove handy if you wind up taking your creditor to court.

### **Follow up all phone conversations in writing.**

I can't tell you how many times people have told me that they can't understand why a deal negotiated over the phone with a creditor or a credit reporting agency didn't happen, or was lost or forgotten by the person or company making the deal.

Hello! There is no way you can prove any promise made over the phone. Whether you are writing to a collection agency, any of the credit bureaus, negotiating a settlement, validating a debt, or disputing a credit listing, you are not protected unless you have some record of the correspondence. You must have some written proof!

### **Send all mail certified "return receipt requested."**

There are several ways to get proof of a promise or even to simply prove that your letter was received:

**Send letters certified or registered mail.** This requires a trip to the post office. Depending on the size of the letter and the distance it travels, you will spend no more than \$3 per letter. You will be sent a receipt (a green postcard) that is your proof that your letter reached the intended destination.

Here's a nifty trick: If you are not sending any documentation along with your letter, the U.S. Postal Service just started a new service where you can upload a letter and they will print it out and send it for you certified mail (for an additional fee, of course). It's a great time saver since you don't need to stand in line at the post office. The website for this is: <http://www.usps.gov>.

It's relatively easy for a recipient to blow off receiving a certified letter. If problems arise delivering the letter (the intended recipient may have pretended to not be home when the postman rang the doorbell), it is sent back to a local post office. The recipient is notified

that a letter is being held at this post office. If no one claims the letter after a certain number of days, it is returned to sender. However, even if the intended recipient avoids your letter, you will still have a receipt verifying you sent certified mail, along with the date you sent it.

If a collection agency or creditor refuses to accept your letter, you might need to get a bit sneakier. Try it again, but this time write “payment enclosed” on the envelope. Chances are, they will sign for that one!

**You can send the letter UPS, Federal Express, or Priority or Express Mail, which will provide a tracking number.**

**Keep copies of everything!**

Keep the credit reports you have requested, the notes you made while analyzing them, copies of the letters you send (including copies of any attachments you include), the “return receipts” you get back from the post office, and any correspondence you receive.



## **SECTION 17: Sample Letters**

### **Requesting the Removal of Inaccurate Information**

This is a sample letter requesting the removal of inaccurate information from a credit report. With this letter, always include any copies of proof you may have (i.e., cancelled checks showing timely payments, paid off accounts, loans) that demonstrate that indeed the information is incorrect. It never hurts to include the consequences that have resulted from this wrongful information as well. The credit agencies give the most immediate attention to seriously wronged consumers. Remember the agencies are bombarded with 10,000 letters every day.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Main Street  
Any Town, State 87901  
(Current address for the last 5 years)  
Your Social Security Number (SSN)  
DOB: 1/1/00

Credit Bureau Name  
Credit Bureau Address  
Some City, Any State 56789

Date:

To Whom it May Concern:

Dear Credit Bureau:

This letter is a formal complaint that you are reporting inaccurate credit information on my credit report.

I am very distressed that you have included the information noted below in my credit profile due to its damaging effects on my good credit standing. As you no doubt are aware, credit reporting laws ensure that bureaus report only accurate credit information. No doubt the inclusion of this inaccurate information is a mistake on either your or the reporting creditor's part. Because of the mistakes on my credit report, I have been wrongfully denied credit recently for a <insert credit type for which you were denied here>, which was highly embarrassing and has negatively impacted my lifestyle.

(Optional) With the proof I'm attaching to this letter, I'm sure you'll agree that the inaccurate information is harmful to me and, thus, needs to be removed ASAP.

The following information, therefore, needs to be verified and deleted from the report as soon as possible:

CREDITOR AGENCY, acct. XXXX-XXX-XXXX-XXXX

Sincerely,

Your Signature  
Your Full Name

Enclosure

## **Requesting the Removal of Inaccurate Information #2**

This is a second sample letter requesting the removal of inaccurate information from a credit report. With this letter, always include any copies of proof you may have (i.e., cancelled checks showing timely payments, paid off accounts, loans) that demonstrate that indeed the information is incorrect. It never hurts to include the consequences that have resulted from this wrongful information as well. The credit agencies give the most immediate attention to seriously wronged consumers. Remember the agencies are bombarded with 10,000 letters every day.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, STATE 56789  
(Current address for the last 5 years)  
Your Social Security Number (SSN)  
DOB: 5/21/67 (Your Date of Birth)

Credit Bureau Name  
Credit Bureau Address  
Some City, Any State 56789

Date:

To Whom it May Concern:

I've just reviewed my credit report and noticed there are several inaccurate items on my report as follows:

Chase VISA Acct: XXXXX-XXXXX-XXXX-XXX:  
This account is listed as being 30 days late. I have never been late on this account.

Sears Acct: XXXXX-XXXXX-XXXX-XXX:  
This account is listed as being 30 days late. I have never been late on this account.

Universal Acct: XXXXX-XXXXX-XXXX-XXX:  
This account is listed as being 30 days late. I have never been late on this account.

In addition, there are a number of credit accounts that have been inactive for more than seven years. As you know, the FCRA states that all credit older than seven years should be removed from my report. Therefore, the following accounts should be removed:

Diner's Club Acct: XXXXX-XXXXX-XXXX-XXX

GE Consumer Card Acct: XXXXX-XXXXX-XXXX-XXX

Macy's Acct: XXXXX-XXXXX-XXXX-XXX

I have enclosed a copy of my driver's license as proof of identity.

Sincerely,

Your Signature

Your Full Name

Enclosure

## Getting the Credit Bureau to Update Bankruptcy Accounts

Many times, accounts that are included in a bankruptcy are not updated to reflect it on your credit report, lowering your credit score even more than it already is. This is a sample letter requesting the update of those accounts to show "Included in Bankruptcy."

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, ST 01234  
(Current address for the last 5 years)  
Your Social Security Number (SSN)  
DOB: 12/3/67

Credit Bureau Name  
Credit Bureau Address  
Some City, Any State 56789

RE:  
CREDITOR AGENCY Account XXXXX-XXXXXXXXXXXX  
CREDITOR AGENCY Account YYYYY-XXXXXXXXXXXX  
CREDITOR AGENCY Account ZZZZZ-ZZZZZZZZ

Date:

To Whom it May Concern:

Dear Credit Bureau:

This letter is a formal complaint that you are reporting inaccurate credit information on my credit report. The above referenced accounts were included in my bankruptcy and are instead showing as <chargeoffs> <pastdue> <late>. The incorrect listings are lowering my credit score unnecessarily, and it is also preventing me from purchasing a home. I am enclosing a copy of my bankruptcy discharge papers as proof of the date of my discharge.

Please correct your records to display the proper listings.

Sincerely,

Your Signature  
Your Full Name

Enclosure

## **Follow-Up After Initial Contact with the Bureau Contact**

Use this letter if your initial attempts to gain a response from the credit reporting agency prove fruitless. In this letter, and all succeeding correspondence with the credit reporting agency, you need to get increasingly threatening.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, State 56789  
Your Social Security Number (SSN)

Credit Bureau Name  
Credit Bureau Address  
Some City, Any State 56789

Date:

RE: Dispute Letter of <Date you sent in first or previous requests>

Dear Credit Bureau:

This letter is formal notice that you have failed to respond to my dispute letter of <date>. I sent the initial letter registered mail and have enclosed a copy of the return receipt that you signed on <date>.

As you are well aware, federal law requires you to respond within 30 days. It has now been over that period since your receipt of my letter. As you no doubt are aware, failure to comply with federal regulations by credit reporting agencies is a serious violation of the Fair Credit Reporting Act and may be investigated by the FTC. Obviously, I am maintaining detailed records of all my correspondence with you.

I am aware that you may have misplaced my letters or have failed to respond to my letter because of an oversight due to the high volume of the requests you receive daily. If this is the case, I'm sure you'll want to handle this matter as soon as possible. For this purpose, I have included a copy of my original request, the dated receipt of your reception of the original letter, and a copy of the proof verifying the incorrectness of the credit item you have mistakenly placed on my records.

The following information, therefore, needs to be verified and deleted from my credit report as soon as possible:

CREDITOR AGENCY, acct. XXXX-XXXX-XXXX-XXXX

Sincerely,

Your Signature  
Your Full Name

Enclosure

## **Requesting the Removal of Inquiries**

Prepare letters to each inquiring creditor asking them to remove their inquiry. The Fair Credit Reporting Act allows only authorized inquiries to appear on the consumer credit report. You must challenge whether the inquiring creditor had proper authorization to pull your credit file.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, Your State 01234

Credit Bureau Name  
Credit Bureau Address  
Some City, Any State 56789

Date:

Re: Unauthorized Credit Inquiry

Dear American BestGuess,

I recently received a copy of my credit report. The credit report showed a credit inquiry by your company that I do not recall authorizing. I understand that you shouldn't be allowed to put an inquiry on my file unless I have authorized it. Please have this inquiry removed from my credit file because it is making it very difficult for me to acquire credit.

I have sent this letter certified mail because I need your prompt response to this issue. Please be so kind as to forward me documentation that you have had the unauthorized inquiry removed.

If you find that I am remiss, and you do have my authorization to inquire into my credit report, then please send me proof of this.

Thanking you in advance,

Your Full Name



## **Credit Bureau Verification Procedure Request**

This letter should be sent to the credit bureaus if they come back with a "verified" response when you dispute a negative mark. Credit bureaus will not take the time or trouble to send you this information unless you ask, but it is your right to know it under the FCRA. Many times you can use this information as ammunition for your credit disputes.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
Address1  
Address2  
City, State Zip

Company  
Address1  
Address2  
City, State Zip

Date

To Whom It May Concern:

This letter is a formal request for the description of the procedures used to determine the accuracy and completeness of the disputed information, including the business name, address, and telephone number of any furnisher of information contacted in connection with this reinvestigation, in compliance with the Fair Credit Reporting Act, Section 611, part B, subsection (iii)

§ 611. Procedure in case of disputed accuracy [15 U.S.C. § 1681i]

(6)

(B) Contents. As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)

(i) a statement that the reinvestigation is completed;

(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

I am disappointed that you have failed to maintain reasonable procedures to assure complete accuracy in the information you publish, and insist you comply with the law by providing the requested information within the 15 days allowed.

As a matter of convenience to you and to expedite my request, I am resubmitting my request to correct my credit report.

Name of Creditor/Agency, Account # \_\_\_\_\_

<List your reasons for disputing this negative mark here, inaccurate account information, dates wrong, etc.>

As already stated, the listed item is inaccurate and incomplete, and is a very serious error in reporting.

Sincerely,

Signature

Your Full Name

Your Social Security Number (SSN)

## **An Agreement to Compromise Debt**

NEVER settle a debt with a creditor without getting it in writing from them. Here is a letter you can send them to sign. Be sure to insert your terms for the debt within, and don't pay it until you received an original copy with a signature on it. Keep a copy for your files and send the letter registered mail.

Max Creditor, referred to as CREDITOR and Jane Doe, referred to as DEBTOR, agree to compromise the indebtedness as between them. CREDITOR, hereby agrees to compromise the indebtedness due the CREDITOR on the following terms and conditions:

The CREDITOR and the DEBTOR agree that the present debt due is \$1436.18 (one thousand four hundred thirty six & 18/100 dollars). The parties agree that the CREDITOR shall accept the sum of \$1,000 (one thousand & no/100 dollars) as full payment on the debt. The acceptance of the payment will serve as a complete discharge of all monies due. The payment shall be made in cash.

This compromise is expressly conditioned upon the payment being received by <date>. If the DEBTOR fails to pay the compromised amount by <date>, the original amount owed by the DEBTOR will be reinstated in full, and immediately due.

Max Creditor hereby declares that he is authorized to act as an agent of the credit agency.

This Agreement shall be binding upon and inure to the benefit of the parties, their successors, and assignees.

Dated:

Signature:

Max Creditor  
CREDITOR

Signature:

Jane Doe  
DEBTOR

## Acceptance of Verbal Offer (Debt Settlement)

If you have worked out a settlement with a credit card company or collection agency, before you send them any money, you need to confirm the offer in writing and get a company representative's signature on it. This letter is best combined with the "Agreement to settle a debt" letter.

**Keep a copy for your files and send the letter registered mail.**

Dear Creditor,

Re: Account Number \_\_\_\_\_

This letter is to confirm the settlement offer made between myself and your customer service representative \_\_\_\_\_ phone number \_\_\_\_\_ made on \_\_\_\_\_, 20\_\_.

I really appreciate the fact that your company is willing to work with me on this matter; I wanted to make an honest attempt to settle this debt.

The amount your customer service representative and I agreed to settle this debt in full is \$ \_\_\_\_\_. In addition, any references to late payment or charge off regarding this account are to be removed from my credit file.

If these terms are acceptable to your company, please sign the attached letter of agreement and return a copy to me. Upon receipt of this signed acknowledged agreement, I will express you a money order in the amount stated above.

Yours truly,

Your Full Name

Enclosed attachments

## Counter Offer (Debt Settlement)

If you want to counter an offer made to you by a creditor, verbal or otherwise, this is the way to go. You should pair this letter with the "Agreement to Settle a Debt" letter, also included in this appendix.

**Keep a copy for your files and send the letter registered mail.**

Dear Creditor,

Re: Account Number \_\_\_\_\_

This letter is to make a counter offer to the settlement offer made between myself and your customer service representative \_\_\_\_\_ phone number \_\_\_\_\_ made on \_\_\_\_\_, 20\_\_.

I really appreciate the fact that your company is willing to work with me on this matter; I want to make an honest attempt to settle this debt.

The amount I would like to propose as the payment in full for this debt is \$ \_\_\_\_\_. In addition, this settlement would require any references to late payment or charge off regarding this account to be removed from my credit file.

Unfortunately, I have several other companies with which to conduct negotiations over debt, and a limited amount of funds. I will most likely be able to make payments to those companies who are willing to meet my terms. I do not have enough money to pay everyone. Time is of the essence; I have already reached agreeable settlements with a couple of my creditors and I doubt if I will have any funds remaining after the end of this calendar month.

<optional clause>

My credit rating is the most important item in this settlement agreement to me, I may be willing to offer more money to regain a perfect credit rating as reported to the credit bureaus.

If these terms are acceptable to your company, please sign the attached letter of agreement and return a copy to me. Upon receipt of this signed acknowledged agreement, I will express you a money order in the amount stated above.

Yours truly,

Your Full Name

## Counter Offer (Debt Settlement)

If you want to counter an offer made to you by a creditor, verbal or otherwise, this is the way to go. You should pair this letter with the "Agreement to Settle a Debt" letter, also included in this appendix.

**Keep a copy for your files and send the letter registered mail.**

Dear Creditor,

Re: Account Number \_\_\_\_\_

This letter is to make a counter offer to the settlement offer made between myself and your customer service representative \_\_\_\_\_ phone number \_\_\_\_\_ made on \_\_\_\_\_, 20\_\_.

I really appreciate the fact that your company is willing to work with me on this matter; I want to make an honest attempt to settle this debt.

The amount I would like to propose as the payment in full for this debt is \$ \_\_\_\_\_. In addition, this settlement would require any references to late payment or charge off regarding this account to be removed from my credit file.

Unfortunately, I have several other companies with which to conduct negotiations over debt, and a limited amount of funds. I will most likely be able to make payments to those companies who are willing to meet my terms. I do not have enough money to pay everyone. Time is of the essence; I have already reached agreeable settlements with a couple of my creditors and I doubt if I will have any funds remaining after the end of this calendar month.

<optional clause>

My credit rating is the most important item in this settlement agreement to me, I may be willing to offer more money to regain a perfect credit rating as reported to the credit bureaus.

If these terms are acceptable to your company, please sign the attached letter of agreement and return a copy to me. Upon receipt of this signed acknowledged agreement, I will express you a money order in the amount stated above.

Yours truly,

Your Full Name

## Unsolicited Offer

If you want to make a creditor a written offer without discussing it first, here is the way to go. You should pair this letter with the "Agreement to Settle a Debt" letter, also included in this appendix.

**Keep a copy for your files and send the letter registered mail.**

Dear Creditor,

Re: Account Number \_\_\_\_\_

After a long period of difficult times with my personal finances, I am finally in a position where I would like to take care of the debt whose account number is above. I really appreciate in advance all efforts your company is willing to make to help us resolve this issue; I want to make an honest attempt to settle this debt.

The amount I would like to propose as the payment in full for this debt is \$ \_\_\_\_\_. In addition, this settlement would require any references to late payment or charge off regarding this account to be removed from my credit file.

Unfortunately, I have several other companies with which to conduct negotiations over debt, and a limited amount of funds. I will most likely be able to make payments to those companies who are willing to meet my terms. I do not have enough money to pay everyone. Time is of the essence; I have already reached agreeable settlements with a couple of my creditors and I doubt if I will have any funds remaining after the end of this calendar month.

<optional clause>

My credit rating is the most important item in this settlement agreement to me, I may be willing to offer more money to regain a perfect credit rating as reported to the credit bureaus.

If these terms are acceptable to your company, please sign the attached letter of agreement and return a copy to me. Upon receipt of this signed acknowledged agreement, I will express you a money order in the amount stated above.

Yours truly,

Your Full Name

## Settle With Your Credit Card Companies

If you are having trouble making your credit card payments, you may want to contact them and ask them if they can work out an alternate payment plan for you, reduce the interest rate or even the debt. But you will have to explain to them the circumstances you are in to convince them. Keep a copy for your files and send the letter registered mail.

Company  
Address  
City, State Zip

Date:

RE: Account XXXXX-XXXX-XXXXX

Dear Sir/Madame:

I am currently undergoing some financial difficulties and I fear I will no longer be able to make my monthly obligations to you. I don't want to declare bankruptcy, and I feel a moral obligation to try and work out something with you so I will not have to default on this debt. I would like to work out an alternate payment plan with you if possible.

I would like to propose that you close my account, waive the interest payments and accept a new balance of 50% of what I currently owe. I can make a monthly payment of <state payment, should be between \$50-\$100>.

Here are the circumstances in which I find myself: <Write the reasons for your trouble. Make sure that circumstances included here sound like they were beyond your control, not that you spent too much money and now can't pay it. Any medical hardships, divorce, thefts, accidents are especially good here.>

I'm sure you will agree that the situation I described above has forced me to this point. Please feel free to have one of your representatives call me and work out a final plan. If you feel you can't work with me, I will be forced to default on this account and pay creditors who can work with me.

Thanks for your time.

Sincerely,

Your Full Name



## **Cease and Desist to a Collection Agency**

Under the Fair Debt Collection Act, you have the right to ask the collection agencies to stop contacting you-and they must comply with this request. Here is a letter you might use as a guide.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, Your State 01234

ABC Collections  
123 South 6<sup>th</sup>. Ave  
Ceko, IL 00001

Date

RE: Account XXXX-XXXX-XXXX-XXXX

Dear Sir or Madam:

I request that you **CEASE** and **DESIST** in your efforts to collect on the above referenced account (see letter attached). It is my personal policy not to deal with collection agencies and I will only deal with the original creditor of this account.

You are hereby instructed to cease collection efforts immediately or face legal sanctions under applicable federal and state law.

**GIVE THIS LETTER THE IMMEDIATE ATTENTION IT DESERVES.**

Cordially,

Your Signature  
Your Full Name

## **Debt Validation**

Under the Federal Debt Collection Practices Act, you are allowed to challenge the validity of a debt that a collection agency states you owe to them. Use this letter and the following form to make the agency verify that the debt is actually yours and owed by you.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, Your State 01234

ABC Collections  
123 South 6<sup>th</sup>. Ave  
Ceko, IL 00001

Date

Re: Acct # XXXX-XXXX-XXXX-XXXX

To Whom It May Concern:

I recently pulled a copy of my credit report and noticed that there was a collection from your agency on my credit report. I was never notified of this collection. This is not a refusal to pay, but a notice that your claim is disputed.

Under the FDCPA, I have the right to request validation of the debt you say I owe you. I am requesting proof that I am indeed the party you are asking to pay this debt, and there is some contractual obligation, which is binding on me to pay this debt.

You should also be aware that reporting such invalidated information to major credit bureaus might constitute defamation of character, as the negative marks on my credit report harm my credit and prevent me from enjoying all the benefits of good credit. In addition, until you provide me with proper validation of this debt, you are not allowed to pursue any collection activities, including reporting this information on my credit report. I'm sure your legal staff will agree that noncompliance with this request could put your company in serious legal trouble with the FTC and other state or federal agencies.

I also noticed that you are not licensed to in my state of Arizona, and under Arizona State law, all collection agencies must be licensed to collect from any Arizona resident. I am planning to contact my state attorney general to notify him of your illegal activities. I also think the Federal Trade Commission and the Better Business Bureaus would be interested in your actions against me.

Please attach copies of:

1. Agreement with your client that grants you the authority to collect on this alleged debt
2. Agreement that bears the signature of the alleged debtor wherein he agreed to pay the creditor.
3. The complete payment history on this account so I have proof that the amount is correct.

Best regards,

Your Signature  
Your Full Name

## **Debt Validation Follow Up Letter to a Collection Agency**

If you do not hear back from the collection agency within the 30 days of sending your "Debt Validation" letter, you can send them this letter.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, Your State 01234

ABC Collections  
123 South 6<sup>th</sup>. Ave  
Ceko, IL 00001

Date:

Re: Acct # XXXX-XXXX-XXXX-XXXX

To Whom It May Concern:

I have previously sent you a request to validate my debt, account number XXXXXX-XXX on February 15, 2008.

Under the Fair Debt Collections Practices Act (FDCPA), I have the right to request validation of the debt you say I owe you, and it is your responsibility to provide me with proper documentation should you continue with your collection activities. I have received no reply from you, though I did receive confirmation via mail that you did receive my letter on February 20, 2008, and my dispute with the 3 credit bureaus over this collection came back as "verified." According to an opinion letter written by the FTC and posted on their website, reporting this collection is considered collection activity.

You are now in violation of the FCPDA, and are now subject to fines of \$1,000, which I may collect from you by filing a claim in small claims court. I intend to follow through with the suit if I do not hear back from you within 15 days.

You should also be aware that reporting such invalidated information to major credit bureaus might constitute defamation of character, as the negative marks on my credit report harm my credit and prevent me from enjoying all the benefits of good credit. I'm sure your legal staff will agree that non-compliance with this request could put your company in serious legal trouble with the FTC and other state or federal agencies.

Your Full Name

## **After the Collection Agency Fails to Validate Your Debt/ The Letter to Send to the Credit Bureaus**

Assuming you have contacted the collection agency using our debt validation methods, and they have failed to send you adequate proof of your legal obligation to pay a debt, this is the letter you need to write to the credit bureaus.

**Keep a copy for your files and send the letter registered mail.**

Company  
Address1  
Address2  
City, State Zip

Date

RE: Account XXXXX-XXXX-XXXXX

Dear Sir/Madame:

I am writing to dispute the account referenced above. I have disputed this account information as inaccurate with you, and you have come back to me and stated you were able to verify this debt. How is this possible? Under the laws of the FDCPA, I have contacted the collection agency myself and have been unable to get them to verify that this is indeed my debt.

I enclose copies of my requests to the collection agency, asking them to validate my debts, and the receipts showing that I sent these letter certified signature request. This debt is not mine and I was given no evidence of my obligation to pay this debt to this collection agency.

The FCRA requires you to verify the validity of the item within 30 days. If the validity cannot be verified, you are obligated by law to remove the item. There is a clear case of unverified debt here, and I urge you to remove this item before I am forced to take legal action.

In the event that you can not verify the item pursuant to the FCRA, and you continue to list the disputed item on my credit report I will find it necessary to sue you for actual damages and declaratory relief under the FCRA. According to this regulation, I may sue you in any qualified state or federal court, including small claims court in my area.

While I prefer not to litigate, I will use the courts as needed to enforce my rights under the FCRA.

I look forward to an uneventful resolution of this matter.

Sincerely,

Signature  
Your Full Name  
Your Address  
City, State Zip

Enclosures

## Getting the Original Creditor to Verify Debt

Debt validation does not work with the original creditor, only with collection agencies. The only way you can get an original creditor to budge on responding to you via snail mail (so you can send it certified) is to tell them you will sue them for defamation if they can't prove that you were actually late or even that you are on the account.

This letter is perfect for those people who are trying to get "Authorized User" accounts off of their credit reports. The court case cited in the below letter is included on the CD under Court Cases.

**Keep a copy for your files and send the letter registered mail.**

Company  
Address1  
Address2  
City, State Zip

Date

RE: Account XXXXX-XXXX-XXXXX

Dear Sir/Madame:

I am writing to dispute the account referenced above. I have disputed this account information as inaccurate with the credit bureaus <insert names of credit bureaus here>, and you have been able to verify this debt. How is this possible? I was <not late> <this is not my account> <I am only an authorized user>.

In the event that you can not verify the item pursuant to the FCRA, and you continue to list the disputed item on my credit report I will find it necessary to sue you for actual defamation damages and declaratory relief under the FCRA. According to this regulation, I may sue you in any qualified state or federal court, including small claims court in my area. You have severely limited my ability to <purchase a home> <get a job> <get a credit card>.

In light of the recent court case opinion No. 00-15946 CV-99-00290-D.C. by the US Court of Appeals 9th Circuit, Nelson Vs. Chase Manhattan, the court ruled that the creditor has the responsibility to investigate and make sure that correct information is being reported to the bureaus, and that the consumer has a right to sue under the FCRA, should his or her rights be violated.

While I prefer not to litigate, I will use the courts as needed to enforce my rights under the FCRA.

I look forward to an uneventful resolution of this matter.

Sincerely,

Signature

Your Full Name

Your Address

City, State Zip

Enclosures <you can enclose a copy of the court case referenced above>



## **Asking ChexSystems to Remove a Listing**

ChexSystems is the "credit bureau" for checking accounts; it maintains a database of individuals who have written a number of bad checks. If you get on their list, you won't be able to open a checking account anywhere in the United States.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, Your State 01234  
Your Social Security Number (SSN)

ChexSystems  
Customer Relations  
12005 Ford Road Suite 600  
Dallas, TX 75234

Date:

To Whom It May Concern:

My bank has informed me that there is negative information reported by Glendale Federal Bank included in the file ChexSystems maintains under my Social Security Number. Upon ordering a copy of the report, I see an entry from this bank listing a "debit card revoked" in March 2006.

I do not recall having a debit card from this bank in 2006.

Please validate this information with Glendale Federal Bank and provide me with copies of any documentation associated with this "debit card" bearing my signature. In the absence of any such documentation bearing my signature, I ask that this information be immediately deleted from the file you maintain under my Social Security Number.

Sincerely,

Your Signature  
Your Full Name

## Notice of Intent to File a Lawsuit

If the credit bureaus don't respond to your requests to verify listings in the period specified by law, or have not removed negative listings despite the proof you have provided, you have every right to sue them. They are not a government agency. You can even sue them in small claims court.

**Keep a copy for your files and send the letter registered mail.**

Your Name  
123 Your Street Address  
Your City, ST 01234

Equifax  
1550 Peachtree Street  
Atlanta, GA 30309

Date:

Re: Acct # XXXX-XXXX-XXXX-XXXX

To Whom It May Concern:

Enclosed is a copy of the lawsuit that I filed against you in <your court> on <date>. Currently, the Pretrial Conference is scheduled for <date> at <time> in courtroom #XX. The case number is <insert case #>.

The reason the lawsuit was filed was due to a completely inadequate response from your company. When someone is the victim of identity theft, it is simply a nightmare trying to get false information removed from a credit file. I have contacted all of the false creditors listed on my credit file. I have challenged all of the false listings on my credit file. Nothing ever happened to fix the situation.

Over 90 days ago, I wrote to each of the creditors in question and demanded proof that I am their customer. I asked for proof of the alleged debt, including specifically the alleged contract or other instrument bearing my signature. So far, none of them has been able to provide such proof to me. I have sent follow-up letters to each of them and there still is no proof. I have attempted phone contact, but I simply get transferred around and nothing ever gets accomplished.

I have fully investigated my rights in this matter. Under the principals of estoppel, if no proof is provided to me within 30 days, I may presume that no proof of the alleged debt, nor therefore any such debt, in fact exists. I have copies of the certified letters and dates prepared to bring to court on <date> at <time>. Also, under the Fair Credit Reporting Act, these disputed items may not appear on my credit report if they cannot be supported by evidence.

Under the Fair Credit Reporting Act, if the debt can't be verified within 30 days, then it must be removed. Your letters to me claim to have 'verified' the debt, but this is in fact not true under law. Simply contacting the alleged creditor and asking them to match up numbers in their database is not sufficient verification for identity theft. Of course, the information matches up. Someone clearly used my information without my authorization.

Now I am suing Equifax for being such a pain in the posterior to me. I have provided more than sufficient evidence to get these false accounts removed. You may contact me before <date> at <time> at <your phone number> or at my address listed at the top of this letter. This matter can be settled simply by your agreement to remove the false information from my credit file.

I require a response, on point, in writing, hand signed, and in a timely manner. If I get another pointless letter from you saying that it has already been 'verified' then there will be no more opportunity for negotiation. This will proceed in court until I have successfully proven to a judge that this false information must be removed from my credit file. I will also be aggressively pursuing the full judgment that I get against Equifax for violation of the Fair Credit Reporting Act and Defamation.

I have already won a similar lawsuit against TransUnion. Enclosed is a copy of that settlement. I will agree to a similar settlement with Equifax if you contact me before <date> at <time>. If you accept the same terms as TransUnion did, then I will dismiss my lawsuit against Equifax and you will not need to appear in <your county and state>.

The items to be removed from my credit report are listed as follows:

(list accounts and account numbers)

Sincerely,

Your Signature  
Your Full Name

## Request for Credit Report If You Were Denied Credit

By law, if you were denied credit, you have a right to see your credit report within 60 days of the turn down. You may send a copy of this letter to all three bureaus.

A Credit Bureau  
Credit Bureaus Address 1  
Bureau City, ST 12345

6/21/2008

Dear Credit Bureau,

I was recently turned down for a <select one - credit card, mortgage, and auto loan.  
Under the FCRA, I am entitled to a free copy of my credit report. I am enclosing a copy of the turn down letter. Please send me a copy of my credit report.

My full name is Your Name.  
My birth date is 01-01-1950.  
My Social Security number is 123-45-6789.  
My current address is 123 Your Street Address, Your City, ST 01234.  
I formerly lived at 456 Old Street Address, Old City, ST 34567.

Enclosed, also please find a photocopy of my driving license, showing my current address, and a photocopy of my Social Security card.

Please send the credit report as soon as you can.

Thank you.

Sincerely,

Your Full Name  
123 Your Street Address  
Your City, ST 01234

Enclosures

## **Request for Credit File from Innovis**

Innovis is the 4th credit bureau in this country and believe me, many creditors are reporting consumer information to this database. In addition, some creditors are using this information. However, they are currently refusing to provide credit reports to consumers, as is their right under the FCRA. Why do you want to see it? To remove damaging information from it, just as you would want to correct your Experian, Equifax, or TransUnion files.

\_\_\_\_\_, 2008

Innovis Data Solutions

P.O. Box 219297  
Houston, Texas 77218-9297  
Dear Sirs:

This is a request for my Innovis credit file, which you are maintaining in your credit databases.

As you know or, at least should know, the federal Fair Credit Reporting Act ("FCRA"), specifically 15 USC 1681, et seq., requires that upon request, a consumer reporting agency must disclose to an individual his or her credit file upon receipt of appropriate information proving the identity of that individual. For purposes of this statute, "consumer reporting agency" is defined in relevant part as "any person which, for monetary fees, due, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties . . .", and a credit "file" is defined as "all information on [a] consumer recorded and maintained by a consumer reporting agency regardless of how the information is stored."

It is well known within the lending industry that you are a credit bureau, and as a matter of fact, many high-profile industry players are reporting credit information to you on a regular basis. As such, Innovis is unconditionally obligated under both of these statutory authorities to disclose to me the complete contents of all files, which Innovis maintains on me. The failure and/or refusal of Innovis to disclose this information makes available to me a number of remedies, including \$1,000 in fines as mandated by the FCRA.

In light of the above, I hereby demand that Innovis immediately send to me any and all credit files and/or information, which it is maintaining on me.

Very truly yours,  
Name  
SSN: 123-45-6789  
1 E. Main  
Anytown, USA 00000

## Request for Credit Report If You Are Buying One

If you would like to order your credit report, you can do so online or send them a check in the mail. Don't forget to check Section \_\_\_\_\_ to see if your state allows you to order one free.

A Credit Bureau  
Credit Bureaus Address 1  
Bureau City, ST 12345

6/21/2008

Dear Credit Bureau,

Please send me a copy of my credit report.

My full name is Your Name.  
My birth date is 01-01-1950.  
My Social Security number is 123-45-6789.  
My current address is 123 Your Street Address, Your City, ST 01234.  
I formerly lived at 456 Old Street Address, Old City, ST 34567.

Enclosed, also please find a check for \$8.50, a photocopy of my driving license, showing my current address, and a photocopy of my Social Security card.

Please send the credit report as soon as you can.

Thank you.

Sincerely,

Your Full Name  
123 Your Street Address  
Your City, ST 01234

Enclosures

## Contact Your Credit Card Companies

If you are having trouble making your credit card payments, you may want to contact them and ask them if they can work out an alternate payment plan for you, reduce the interest rate or even the debt. But you will have to explain to them the circumstances you are in to convince them.

Company  
Address  
City, State Zip

Date

RE: Account XXXXX-XXXX-XXXXX

Dear Sir/Madame:

I am currently undergoing some financial difficulties and I fear I will no longer be able to make my monthly obligations to you. I don't want to declare bankruptcy, and I feel a moral obligation to try and work out something with you so I will not have to default on this debt. I would like to work out an alternate payment plan with you if possible.

I would like to propose that you close my account, waive the interest payments and accept a new balance of 50% of what I currently owe. I can make a monthly payment of <state payment, should be between \$50-\$100>.

Here are the circumstances in which I find myself. <Write the reasons for your trouble. Make sure that circumstances included here sound like they were beyond your control, not that you spent too much money and now can't pay it. Any medical hardships, divorce, thefts, accidents are especially good here.>

I'm sure you will agree that the situation I described above has forced me to this point. Please feel free to have one of your representatives call me and work out a final plan. If you feel you can't work with me, I will be forced to default on this account and pay creditors who can work with me.

Thanks for your time,

Your Full Name

## Motion to Vacate

This document tells the court why a judgment against you should be vacated (or dismissed). First, you need to identify the case by name and court reference number and all the persons involved in the judgment. Next, explain your reasons for bringing the motion. State your "procedural defenses," that is, the good reason(s) why you did not respond to the summons and complaint on time or appear at a "show cause" hearing.

IN THE SUPERIOR COURT OF THE STATE OF <YOUR STATE>  
IN AND FOR THE COUNTY OF <YOUR COUNTY>

<The Original Plaintiff> Plaintiff,

vs.

<YOU>,

Defendant.

No. <COURT REFERENCE NUMBER>

### MOTION AND DECLARATION TO VACATE JUDGMENT

NOW COMES the Plaintiff, Pro Se and prays this Honorable Court to Deny the Defendant's Motion to Dismiss and Motion for Sanction for the following reasons:

1. Relief requested. The defendant(s) move(s) the court for an order vacating the judgment entered in this action until the motion can be heard.
2. Statement of facts and issues. This motion is based on the following grounds: <Enter your reasons: you weren't properly served, the judgment was entered even though you filed the right paperwork>

Dated:

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Defendant(s) (Signature)

Defendant(s) Name (Print)

Address

Telephone Number



## DECLARATION

I, <my name>, declare as follows:

1. I am the defendant in this unlawful detainer action.
2. I request that the judgment entered in this action be vacated for the

following reasons:

< Give your reasons: A) the collection agency never responded to my request for validation, therefore never giving any proof that the debt was mine under the FDCPA. B) The amount of the debt exceeded the state's usury interest limits>

I certify under penalty of perjury under the laws of the state of <YOUR STATE> that the foregoing statement is true.

Signed in [CITY], [STATE] on [DATE].

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Signature

Print or Type Full Name

## **Basis of Lawsuit**

When a company refuses to validate your debt, and furthermore decides to contact you after you have sent them notice of your request for validation, they are in clear violation of the FDCPA. You are within your rights to sue them for damages in small claims court for these violations. To do so, you need to file a Basis of Lawsuit document, which will clearly explain to the court and the judge what you are suing for. The more clearly you state your case, the better chances you have of winning, should the case go to court. You need to include all copies of the documentation included here.

<Court Name>  
<YOUR NAME>  
Plaintiff

v.  
<Evil Collection Agency X>  
Defendant  
Statement of facts

PLAINTIFF, <your name>, is an individual living in the State of <Your State>.

DEFENDANT, <Evil Collection Agency X>, is a <corporation, LLC or whatever> formed under the laws of the State of <STATE the business is incorporated in>.

COUNTS <Provide detail and documentation as in the following sample.>

I  
Defendant sent a collection notice to Plaintiff on or about January 1, 2008.  
(Exhibit A)

II  
As is Plaintiff's lawful right in accordance with the Fair Debt Collection Practices Act (FDCPA), Plaintiff sent via United States Postal Service Certified Return Receipt, a letter requesting formal debt validation. This letter was sent on January 10, 2008 and signed for by Defendant's office on January 18th, 2008, well within the 30-day period expressly provided by the FDCPA. (Exhibit B validation letter sent to Defendant)(Exhibit C proof of delivery to defendant)

III  
Defendant failed to respond with any type of requested validation.

#### IV

On February 18th, 2008, in a good faith effort to allow Defendant ample opportunity to validate the alleged debts, sent a second letter via Certified mail with return receipt requested, which was signed for by the defendant on February 23rd, 2002. (Exhibit D Letter sent to Defendant) (Exhibit E proof of delivery to defendant)

#### V

Defendant again failed to respond.

#### VI

On February 18th, 2002, Plaintiff received a collection notice, this notice informing Plaintiff that this item will be placed on Plaintiff's credit reports, again violating the Plaintiff's rights under the FDCPA.

#### VII

On February 19th, 2008, Plaintiff contacted the Defendant via telephone, to inform the Defendant of the possible legal ramifications. Defendant then demanded payment of the debt from the Plaintiff, another violation of the FDCPA Section 809 (b), continuance of debt collection before validation of debt.

#### VIII

On or around February 20th, 2008, this account was reported to Experian in violation of the FDCPA, the FCRA, and an FTC staff opinion letter, which clearly state that a collection agency may not report an account to the credit reporting agencies during the pendency of its verification of the account to the debtor, if the debtor has so requested.

#### IX

On or around March 5th, 2002., this account was reported to TransUnion in violation of the FDCPA, the FCRA, and an FTC staff opinion letter which clearly states that a collection agency may not report an account to the credit reporting agencies during the pendency of its verification of the account to the debtor, if the debtor has so requested.

#### X

On or around March 5th, 2002, this account was reported to Equifax in violation of the FDCPA, the FCRA, and an FTC staff opinion letter, which clearly states that a collection agency may not report an account to the credit reporting agencies during the pendency of its verification of the account to the debtor, if the debtor has so requested.

## XI

On March 9th, 2008, Plaintiff received a printout of the original creditors terms of service (TOS) as well as a printout of what appeared to be the last statement from the original creditor. The plaintiff specifically asked for the original contract bearing the plaintiff's signature, as well as the Defendant's right to collect on this debt.

## XII

Because of the Defendant's blatant disregard for the Plaintiff's rights as allowed by the FDCPA and FCRA, the Plaintiff has been denied \$8,000 in credit with Plaintiff's current creditor. (Exhibit E and F). The Defendant has also hampered the Plaintiff's ability to obtain a mortgage.

## XII

These actions on the part of Defendant demonstrate a willful disregard for federal law and constitute a blatant attempt to injure or ruin the credit rating of Plaintiff since Defendant has demonstrated an inability to validate the alleged debt and subsequently attempted to coerce payment.

Wherefore PLAINTIFF prays for the following relief:

<State the relief you are seeking. Be sure to include actual, statutory and punitive damages, as in the following sample.>

Plaintiff requests judgment in the amount of \$1,000 plus accrued court costs plus permanent removal of all Defendants' collection account trade lines from Plaintiff's files with the four national credit reporting agencies (Equifax, Experian, TransUnion and Innovis).

PLAINTIFF further prays for the following relief:

- For award of court costs and incurred herein.
- For prejudgment and post judgment interest.
- For such other and further relief deemed just by the court

## **The FTC OPINION LETTERS:**

### **The Cass-Lefevre letter**

Opinion letter #1: Regarding whether or not a collection agency can report your listing to a CRA if they have not validated the debt.

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Federal Trade Commission

December 23, 1997

Robert G. Cass  
Compliance Counsel  
Commercial Financial Services, Inc.  
2448 E. 81st Street, Suite 5500  
Tulsa, OK 74137-4248

Dear Mr. Cass:

Mr. Medine has asked me to reply to your letter of October 28, 1997, concerning the circumstances under which a debt collector may report a "charged-off debt" to a consumer reporting agency under the enclosed Fair Debt Collection Practices Act. In that letter, you pose four questions, which I set out below with our answers.

I. "Is it permissible under the FDCPA for a debt collector to report charged-off debts to a consumer reporting agency during the term of the 30-day validation period detailed in Section 1692g?" Yes. As stated in the Commission's Staff Commentary on the FDCPA (copy enclosed), a debt collector may accurately report a debt to a consumer reporting agency within the thirty day validation period (p. 50103). We do not regard the action of reporting a debt to a consumer reporting agency as inconsistent with the consumer's dispute or verification rights under § 1692g.

II. "Is it permissible under the FDCPA for a debt collector to report, or continue to report, a consumer's charged-off debt to a consumer reporting agency after the debt collector has received, but not responded to, a consumer's written dispute during the 30-day validation period detailed in § 1692g?" As you know, Section 1692g(b) requires the debt collector to cease collection of the debt at issue if a written dispute is received within the 30-day validation period until verification is obtained. Because we believe that reporting a charged-off debt to a consumer reporting agency, particularly at this stage of the collection process, constitutes "collection activity" on the part of the collector, our answer to your question is No. Although the FDCPA is unclear on this point, we believe the reality is that debt collectors use the reporting mechanism as a tool to persuade

consumers to pay, just like dunning letters and telephone calls. Of course, if a dispute is received after a debt has been reported to a consumer reporting agency, the debt collector is obligated by Section 1692e(8) to inform the consumer reporting agency of the dispute.

III. "Is it permissible under the FDCPA to cease collection of a debt rather than respond to a written dispute from a consumer received during the 30-day validation period?" Yes. There is nothing in the FDCPA that requires a debt collector to continue collecting a debt after a written dispute is received. Further, there is nothing in the FDCPA that requires a response to a written dispute if the debt collector chooses to abandon its collection effort with respect to the debt at issue. See *Smith v. Transworld Systems, Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992).

IV. "Would the following action by a debt collector constitute continued collection activity under § 1692g(b): reporting a charged-off consumer debt to a consumer reporting agency as disputed in accordance with § 1692e(8), when the debt collector became aware of the dispute when the consumer sent a written dispute to the debt collector during the 30-day validation period, and no verification of the debt has been provided by the debt collector?" Yes. As stated in our answer to Question II, we view reporting to a consumer reporting agency as a collection activity prohibited by § 1692g(b) after a written dispute is received and no verification has been provided. Again, however, a debt collector must report a dispute received after a debt has been reported under § 1692e(8).

I hope this is responsive to your request.

Sincerely,  
John F. LeFevre  
Attorney

## **FTC OPINION LETTER #2:**

### **The Wollman letter**

Sending a computerized print out of a debt does not constitute debt validation.

Jeffrey S. Wollman  
Vice President and Controller  
Retrieval Masters Creditors Bureau, Inc.  
1261 Broadway  
New York, New York 10001

Dear Mr. Wollman:

This is in response to your letter of February 9, 1993 to David Medine regarding the type of verification required by Section 809(b) of the Fair Debt Collection Practices Act. You ask whether a collection agency for a medical provider will fulfill the requirements of that Section if it produces "an itemized statement of services rendered to a patient on its own computer from information provided by the medical institution . . ." in response to a request for verification of the debt. You also ask who is responsible for mailing the verification to the consumer.

The statute requires that the debt collector obtain verification of the debt and mail it to the consumer (emphasis mine). Because one of the principal purposes of this Section is to help consumers who have been misidentified by the debt collector or who dispute the amount of the debt, it is important that the verification of the identity of the consumer and the amount of the debt be obtained directly from the creditor. Mere itemization of what the debt collector already has does not accomplish this purpose. As stated above, the statute requires the debt collector, not the creditor, to mail the verification to the consumer.

Your interest in writing is appreciated. Please be aware that since this is only the opinion of Commission staff, the Commission itself is not bound by it.

Sincerely,

John F. LeFevre  
Attorney  
Division of Credit Practices