

# Assignment Contracts and Debt Defense

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## As Close as it Gets to a Silver Bullet for Debt Defendants

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## Assignment Contracts – As Close as it Gets to a Magic Bullet in Debt Defense

A “magic bullet” is a tool or action so powerful and significant that simply invoking it can be a game-changer. We say that there are “no magic bullets” in debt defense, but getting the assignment contract may be as close as it gets. If you can get it, it will make your life easier and will often be enough to win. Provided you know what to do with it.

Caveat: If you’re being sued by an original creditor, none of this will apply to you, because it only comes up with debt buyers.

### What is an Assignment Contract?

An assignment contract is the contract between the original creditor and the debt collector whereby the original creditor sells debts to the debt collector. Selling debts is perfectly legal and is a widespread and commercially reasonable thing to do. Unless your contract with the original creditor prohibits transfer or assignment (very rare in consumer debt), there’s nothing wrong with doing it.

You don’t expect these things to be done on an individual basis, though, do you? No. Consumer debts are bought and sold by the hundreds of thousands at a time. The original creditors – often banks, utilities like phone companies, or gyms – create “portfolios” of debt which they sell to junk debt buyers according to certain terms. These terms are found in the assignment contracts,

and assignment contracts are not little things. They are lengthy contracts of 20-30 pages that apply to all of the debts bought and sold in a given transaction.

The assignment contract, very simply, is the “terms and conditions” of the mass sale of debt accounts. It determines:

- Which documents the debt collector automatically gets (a very small smattering of account records);
- How the debt collector can get more documents – including how much they’ll cost and how fast they’ll come (never in time to respond to a discovery request, strangely enough); and
- Under what conditions the debt sale will be cancelled, if at all.

The assignment contracts set the rules for what the debt collector can get from the original creditor if it needs to sue to collect the debts, how long the original creditor has to provide the material, and how much getting that information will cost. And it states how dependable all that information is. The contracts have many interesting features, and the debt collectors will assuredly NOT want you to see them. In fact, in many cases, the debt collectors would rather dismiss their case against you than let you see the contract.

## **Not Bills of Sale**

Assignment contracts are not bills of sale. The bill of sale is a one-page document that says something “All the debts identified in Exhibit A, attached, are hereby sold and assigned to Company X.” As we have often pointed out, debt collectors often hate to provide the bill of sale or, more often, the accounts subject to a bill of sale, although it’s never been clear to me why this is so.

They REALLY don’t want to give you the assignment contract.

## **What the Assignment Contracts Contain (that Debt Collectors Don’t Want you to See)**

There are two main things the assignment contracts contain that debt collectors do not want you to know about. They don’t want you to know what they think of their own records, and they don’t want you to know how much time, and how much money, it takes for them to obtain records from the original creditors.

## Debts are Sold “As Is”

As you will notice if you take the time to read through the assignment contracts, original creditors sell debts to debt collectors “as is” and without any warranty. Specifically, that means that *the original creditor specifically disclaims any guarantee that the debts or supporting information they’re selling to the debt collectors are legitimate, accurate, or trustworthy*. The natural and intuitive conclusion to be drawn from that is that the records are NOT reliably accurate. It would seem impossible for the records keeper of a company buying these records to swear that they’re accurate, but that is exactly what they intend to do.

## Documents will Take Time and Cost the Debt Collector Money

Another important fact about the Assignment Contracts is that they usually establish that the debt collector can obtain certain specific documents from a certain, very small percentage of debts. And the original creditors give themselves a minimum of sixty (60) days to provide requested information upon receiving the request. Both of these facts are important to people representing themselves pro se – and for the pro se movement at large.

Sixty days is longer than the amount of time permitted in any state’s rules of discovery of which we are aware. That means, in plain English, that if you request documents, the debt collector will never be able to provide you documents within the time permitted by law. They can get extensions – the courts are generous with time, normally – but even with extensions they may not be able to provide the documents within the required time. Therefore, you should push hard to get the information.

It may even be that in California this arrangement makes their bringing suit against you a violation of the California Rules of Civil Procedure .

It is also extremely important to the pro se movement as a whole, and to everyone in it individually, that the original creditors charge for documents and only require themselves to provide documents in a small percentage of the debts. If everyone asked for documents in discovery, the costs would simply bury the debt collectors, and the delays would likely make it impossible for them to answer discovery at all. They would have to change their whole way of doing business.

# Your Legal Leg Up

[Your Legal Leg Up](#) is dedicated to helping people defend themselves from debt lawsuits without having to hire a lawyer. Lawsuits have a number of points where specific action is called or, and we have products to help you deal with most of these situations. We also have memberships that give you access to more materials and better training, and also provide a regular opportunity to

ask questions and get answers in real-time. You can use this time to find out what the debt collectors are trying to do and what you might do in response, and you can get guidance on the issues that matter and how to think about and address them.

In addition to that, our website is a resource for all. Many of the articles and materials are reserved for members, but many others are available to everyone. Every page has a site search button in both the header and footer. Put in a key word – a word you think relates to what you're looking for – and enter. You will get a page of results.

## Products Related to this Article

Assignment contracts relate to any stage of the debt collection process when the debt has been sold from the original creditor. If you are considering the question, though, it's probably because you are being sued. We have products, of course, that would relate to any particular part of the case where you need help, but in a general sense, you should consider our memberships.

## Memberships

Members get the *Litigation Manual* and the *Three Weaknesses Report* for free with membership. And these resources will help you get a good overview of the whole process and help you start focusing in on the specific issues you can use to help you win your case. You will also get discounts on all products as well as unlimited opportunities to join our regularly scheduled teleconferences – your chance to ask questions and get answers in real time.

Find out about memberships by clicking the "About Memberships" link in the menu at the top of the page.

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What you'll receive if you sign up is a series of several videos and articles spread out over several days, and then you will occasionally hear from us as we add information to the site. We don't always announce that information, though.

What you will not receive is any marketing from other people – or much from us, either. Our goal is to make the site more useful to members and visitors, not to swamp anyone with sales materials. The information we send will have links to information or products that we think may be helpful.