Debt Negotiation

How to Negotiate Your Debt with an Original Creditor or Debt Collector

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Introduction

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This book is intended for people who are facing debt problems and need - or think they might need - to negotiate with one or more creditors or debt collectors to try to get out of debt trouble.

The challenge in writing to such a broad group of people from such different backgrounds is to give enough information without going to the point where it seems offensively obvious. And to write at a level which is easy for people who are hurried and under pressure to read and understand. If the materials fail to do that, from your point of view, you can contact us at "Info@YourLegalLegUp.com".

A special challenge in this book comes from a desire to motivate you to take action. It is not enough - in fact it is *nothing*, in a practical sense, for you to read and learn this material, or to go through the preparations, without actually putting your information to the test. In order for any of this to do you any good, you are simply going to *have* to make the calls and be willing to face the creditors and what they might do.

On the one hand we don't want to flood you with information or make the project seem so difficult that you simply decide not to do it, or to have you get stuck at the preparation stage. On the other hand, the value of preparation is very high, but it is not necessarily obvious when it comes to something as *vague*, you might say, as negotiation. You almost never really know when your preparation is paying off, or when you are paying for not having prepared. People almost never announce why they are reducing the amount you owe, and least of all do they want to tell you it is because of your skill or preparation. They won't know it themselves.

Your counterparty has a lot of advantages of resources and position. Your preparation is the only way for you to neutralize these advantages and give yourself a chance. That preparation may seem extensive and exhausting, but we remind you that in the first place we are talking about your future economic well-being here, so it is worth doing for that reason.

In the second place, do the math. If your debt is $5,000, a difference of just 5% is $250. If in reading these materials and doing the preparation you find just one thing that reduces what you must spend by 5% on your debts you will probably be getting paid very well for the time and effort you have spent. And most of the people reading this will have debts considerably larger than $5,000 and will save much more than 5% by doing the preparation. Can you afford not to save the money you could be

saving just because you don't want to put in the effort to learn what you need to learn?

The problem, again, is that the effect of preparation is often not obvious. You're going to have to trust us on this - the work you put into preparation will have dramatic impact on the way the negotiations go. You will know that afterward.

To keep on track, we suggest you use the tracking forms we include in Appendix 7, and that you make a resolution to spend no more than two weeks or so reading this book and doing the preparation necessary. Don't sacrifice the preparation, however, if it takes longer than that. Just remember that the negotiation process itself may take a long time, and your situation won't be better until you get started on that part.

Negotiation is Simple

Negotiation is simple - just:

1. Identify

    All of your debts
    All of your debt owners
    All of your assets,
    All of your needs - both for individual debts and for all of them together. Then

2. Prepare

    Your negotiating plan
    Your arguments
    Your strategy and steps, and
    Your resources (including repairing weaknesses and improving negotiating "posture."
    And then

3. Contact the creditor or debt collector and make an offer (and defend it), and then

4. Receive a counteroffer.

(Repeat steps 3 and 4 until you reach an agreement, and then...)

5. Make, sign, and get signed, a written agreement that says what you want it to say.

The process is actually very simple when you look at it from a distance, but of course the devil is in the details, as they say. This book is designed to help you with those details, but remember that whatever happens as you address your debt, it is up to you. If there is anything you do not know that you cannot find in this book, email us at info@YourLegalLegUp.com. We are eager to hear your questions and comments.

Don't stop there, though, because whatever we happen to say or do, it will eventually be YOU who ends up living with whatever you get, or fail to get, accomplished. We hope this book, and

membership at YourLegalLegUp will provide you with great insight and help, and we are committed to that, but remember that the quality of your life will depend on your doing the best job possible. You must use your own judgment.

This book is not, and you must not consider it to be, legal or financial advice. The materials are designed to educate you so that you can develop and improve your own judgment and then use it in a very flexible situation - negotiations with one or more other parties. Nothing we tell you can substitute for your ability to call up and make a deal, although we can and will encourage you to do that and make many suggestions of things that might help.

10 Principles of Debt Negotiation

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The following are 10 principles that you should use to guide your negotiations - regarding debt or anything else.

1. There are no free lunches - you always pay for whatever you get one way or another.
2. People negotiate (as they do everything else) for *their* benefit, not yours.
3. Professionals prepare, while amateurs "wing it."
4. Always get something back for everything you give up in negotiation.
5. Never negotiate "against yourself" - don't make another offer if you have not received a counteroffer for you last offer.
6. A bird in the hand is worth much, much more than one in the bush - a lump-sum payment is usually a far more effective way to settle debt than agreeing to payments over time.
7. The more you would rather settle than not settle, the more you will pay the other side to do so.
8. Time is a value in negotiation, a patience is a virtue that makes you strong.
9. Anything you do or say that would hurt you *in* a lawsuit makes *having* a lawsuit more likely.
10. Despair is forgetting that the wheel turns - things will always get better if you keep trying.

Foreword

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As you fall behind in payments on your bills, your **creditors** (we often call them "original creditors" to emphasize that they are the ones you supposedly owed money to in the first place) will have a few options. They can, and usually will for a while at least, try to collect the money, either through a collection department within their company or an independent agency. Eventually, they may sell the debt to a debt buyer, write you off and forget about it, or sue you. With any option they may or may not also report you as not paying on the debt, damaging your credit report.

Sometimes it makes sense for you to try to negotiate for a lower payment and less risk of litigation, and less harm to your credit report. This book is designed to help you decide whether it *does* make sense for you to do that, and to help you do it if it does. If you do decide to negotiate, remember that the process is not random and arbitrary – you need a specific and well thought out plan, and you need to understand what you're getting into. This book will help you get yourself ready to do a good job.

What You Want and What They Want

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If you are facing bills that are piling up and bill collectors who are calling, or if you expect those things to happen soon, negotiating with those collectors may help to reduce the harm they do to you. It is possible to do this, but in order to achieve it you must learn how to translate what *you* want into something *someone else* wants, or else to link their needs and wants to yours so that you can, by compromise, get what you need by giving them what they need. That is the essence of negotiation. You want to improve your own financial situation and prevent disaster of course, and you can do that, but it (normally) does not happen as a result of magic or luck - rather, you can only get what you need by making it clear to the other person that giving you what you want is the best way for them to get what they want.

This process will take some time and work, and you will need to face the facts of your situation so you know exactly what you can, or cannot, give. It may require making some tough decisions, and it will require systematically negotiating with the people who can help or hurt you. It can be unpleasant - there's no real way to sugar-coat that - but not only does doing it pay extremely well, but going through the process will also change your view of the world and help you realize how much more power you have than you may have thought. It is definitely worth doing.

Should You Negotiate Yourself? Or Use a Service?

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One question we have often been asked is whether you should negotiate for yourself or hire someone else to do it. Only you can really answer that question, however. What we will say, however, is that, *in general*, debt negotiation companies do not have any secret tools, special access, or even particular knowledge or training to get you better results than you could get for yourself. They can't get you better results than you could get yourself, in other words, although in rare situations you might find a gifted negotiator who is simply better at it than you are, of course.

The "Advantages" of Debt Settlement Companies

Debt settlement companies sometimes compare themselves to plumbers, electricians, or even lawyers and suggest that you would be better off with a "professional" doing your negotiations. They may say they negotiate "in bulk" or use sophisticated "algorithms" to get "everybody" a better deal.

Maybe. But what exactly would be the advantage of negotiating "in bulk?" What does that even mean? Is it using concessions *you* make to get a better deal for someone *else*? Or vice-versa? Or is it simply making a fast, one-size-fits-all arrangement with a creditor without matching that arrangement to your specific needs? And what, exactly, would "algorithms" do or show? Debt negotiation is like hand-to-hand combat: if you're in it, or if you need to be in it, the time for analyzing statistics is over unless you are a debt settlement company trying to decide how hard to work on a specific account.

The Point of Diminishing Returns and Debt Settlement

You may have heard of "the point of diminishing returns." That concept is related to what we have referred to below as "opportunity costs," and what it means is that after a point your later efforts begin to make less impact than your earlier ones. For an example, consider cleaning your house. Washing the dishes might make an immediate and very visible difference if you have let them stack up a bit. Scrubbing the floor might help, as could cleaning off the stove's surface... but after a while - depending on how messy the room was in the first place, how clean you want it, and what other things you need to do - you're going to find that you're spending a lot of time on little details that do not make nearly as obvious an impact. That is the point of diminishing returns: the more time you spend from that point on, the less obvious your work will be.

It works the same way in debt settlement (or debt collection, for that matter). It is *relatively easy* to get the creditor to settle for 30% or 50% less than it initially demanded, but every percentage discount better than that becomes progressively more difficult, requires better arguments and more patience.

If you are a really good cleaner, of course, or if you are trying to make a good impression on someone, the little details in cleaning can make a lot of difference. If you have five houses to clean, on the other hand, you might want to move on to the next house a little sooner. Again, it's the same way with debt negotiation. One of your biggest advantages in dealing with debt collectors is that because they have so many debts to choose from it is less important for them to squeeze every last dollar out of you that they can - their time would be better spent chasing someone else. Hiring a debt settlement company can put you on the wrong side of that dynamic: the company you hire could have better things to do (for themselves) than get you every possible break available. If they can get you a 30% or 50% discount with very little effort, would they rather work hard to get you another 5%? or would their efforts be better spent on finding another customer who would be happy with a 30% discount?

There are reasons they might work hard for you, of course, but this essential principle of economics will work against you when you hire a debt settlement company.

The Advantage of Doing it Yourself

You may need every possible break, and whether or not you actually *have* to have it, it will usually make very good sense (as an investment of your time) to try to get it. That is why, as a matter of fact, you will usually be able to get a better result than a debt negotiator. It's *your* debt and your life, and you care more about it than a negotiator would. Also, you will have power to take, or to threaten to take, actions that a hired negotiator would *not* have the power to take or threaten -- i.e., you could threaten to file suit, defend their suit, or declare bankruptcy (just to mention three examples) that a hired negotiator would probably not be able to do. You can find out what you need to know.

The main advantage of hiring a debt negotiator would be one of convenience or, more likely, you could think of it as just one more price of being afraid. Consider the deal the debt negotiator offers: they'll want a percentage of what they save you, and you can figure out how much that will be. Are you willing to pay someone else $5,000 to make twenty minutes of telephone calls for you that you could make because you're uncomfortable making those calls? It's still going to take the same amount of time

(in days and months) for the deal to come together, and having a debt negotiator will not (or shouldn't, anyway) make that time more comfortable for you. A (non-lawyer) debt negotiator won't make getting sued less likely or reduce the harm to your credit report while they are negotiating for you. You're paying them to consult with you on how much to offer and to transmit that offer to the creditor.

It's a high price to pay someone else to do for something *you* could do. Hired debt negotiators are obviously more experienced in negotiations and are more comfortable with the process (because it is your money, rather than theirs, that they're negotiating with), but with a little work you can more than make up for that. That's what this book is about. As we said above, putting in the work isn't necessarily easy or comfortable, but when you do so you will be prepared to do a better job negotiating for yourself than a hired hand could do - at a small fraction of the cost. As a general rule, you'll never make more per hour of work than you will make by negotiating to reduce a debt.

Why Look to Your Legal Leg Up?

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You may know Your Legal Leg Up from our materials helping people beat the debt collectors in debt lawsuits. We have two main websites for that: YourLegalLegUp.com and USDebtLawExpert.com (our blog). We have posted dozens of videos on Youtube as Fightdebt that have largely focused on the litigation side of debt collection and have hundreds of thousands of views. Why does that matter to you as you try to negotiate with original creditors and debt collectors?

Negotiations Take Place in the Shadow of the Law

It is vitally important for you to remember, *every* time you speak with a debt collector or even a creditor (when you are having trouble paying your bills), that what you are doing is part of one process. We don't say that that the process is all part of a lawsuit – rather, it is all one process of a collection system of which litigation (the lawsuit) is an important part. Thus, admitting the debt in a negotiation, for example, can have a bad effect on you later in a lawsuit if it comes to that. Agreeing to an amount that might or should be paid also can have legal effect – it may create a whole new debt, simplify the burden of proof for the debt collector and extend the statute of limitations of the whole debt.

Unpaid and Unsettled Debts often End in Litigation

Many debts that are not settled *and paid* end up in litigation, a fact the debt collectors know very well. The debt collectors therefore are preparing to litigate all the time they are negotiating - the process is geared towards giving them an advantage if the debt does go into litigation. Thus it is important for *you* also to know the law at every stage of negotiation, at least in a general way. Everything you do that would have a bad effect on you *in* a lawsuit also makes *having* a lawsuit more likely because it makes suing you more attractive. You can trust Your Legal Leg Up to give you the straight information you need to protect yourself at every step of the process.

We Have Much Experience in Negotiation

We are extremely experienced in providing information to normal people fighting to protect their rights, and we do a great job of it. Negotiation is always an important part of litigation, and we had both a considerable amount of experience with negotiation *before* creating our websites and also *as part of* Your Legal Leg Up in guiding people to negotiate successfully with the debt collector lawyers.

We can help you, too. After all, the best victories often come when there isn't a fight, when the parties can see which way the wind is blowing and agree to the best solution without a lot of wasted resources. Our goal is to make sure the wind is blowing the right way when you do negotiate.

Organization of this Book

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This book is based on our own experience as well as extensive research.

We know that most of what is available to people who are planning to negotiate their debt is of a general, theoretical nature, and that it focuses on *information*. Information certainly has its place, of course, but negotiation is more like a movie or a play than a book: it is a *performance* that takes place in and over time. And that means that preparation and practice can be and usually are of much more important than simple understanding.

Professionals prepare, while amateurs "wing it," so we focus a lot of attention on ways you *can* prepare for a process which is largely spontaneous. The fact that the process is somewhat unpredictable, however, does not mean it is impossible to practice, it simply makes doing so a little more difficult. We help you prepare both in terms of gathering together the information you will need

to deal with specific creditors and collectors and also, even more importantly, in a type of practice that helps you put that information to use in the most effective ways possible. One of the most significant lessons we have learned from *our* experience is that having some experience is helpful. The practice points we have included throughout the book are designed to simulate that experience so that you are not surprised by things that happen when you negotiate your debt.

We start with a general resource you should use extensively: the negotiating tips. These include some specific things you should say, preparation points that will help you focus the materials you get here into usable action plans, plus practice points that will give you practical experience using the materials you learn. This section is designed to give you an overview of the negotiation process and set the context for the rest of the materials.

Next there is a discussion of negotiation itself: some of the risks, rewards and costs of negotiations of any sort. This is designed to prepare you for the actual process of negotiations and to help you decide whether and how to do your own negotiations in a general way. We even suggest ways to help you reduce certain risks and increase your bargaining power. Then we move to a more specific focus on *debt* negotiations. We establish some definitions and discuss the people you might negotiate with in significant detail here, including an analysis of their legal rights and relationships.

We will discuss legal rights and relationships extensively throughout the book. We do that not because these debts will always end up in litigation, of course, but people do always negotiate according to their power to *force* you to do what they want at least to some extent. And their "power to force" means both their legal *right* to do it and their more practical *ability,* in terms of resources and convenience, to do it.

In any event, the power to force a particular outcome often depends upon the legal status of your "counterparty," and knowing that status will increase your negotiating power by using their weaknesses or desires to your own advantage. Then we help you determine the best way to negotiate, the best things to say, and the way to do it all with the least amount of harm to your credit report and financial future. Finally, we discuss the agreement you will actually reach with the debt collector or creditor.

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APPENDICES

Chapter One: Negotiating Tips

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The following are 15 tips to use in negotiations. Use the "preparation points" to prepare for you negotiations and understand why and how to use these tips. Then we give you some exercises to practice.

Please take note that these strategies are the "tip of the iceberg" of negotiations so to speak - they're just some of the things you will *say* to the other side. To make them work, you have to do the work of preparation that supports them underneath. That's what sets this book, and the Debt Negotiation System more generally, apart from other things you can read on negotiation. We put the tips here to give you an overall sense of what you are going to need to do -- so that the materials that follow make sense to you. To use these tips, however, you will obviously need to go through the whole book ***and then come back and do the practice points***. Remember that while you could wing it after you get the specific information called for in the preparation points, the **practice is where you learn how to make use of the material** in a way which you can expect to be effective.

About "Practice" in General

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Remembering that negotiation is a *performance*, you need to practice in as close to realistic circumstances as possible. That means that you should first work out what you're going to say, then rehearse it to yourself, but then - crucially - you should practice it on someone else. We call this person your "practice partner," and it should be someone you trust either because you know them and trust them or, ironically, because they don't know you and you don't have to care (i.e., you could practice on very small debts or in purchasing things with people you don't know or care about, or in situations where it doesn't really matter).

You will notice that things sound *very different* when you say them aloud to someone else than when you say them to yourself. Since much of your negotiation is going to take place on the telephone (rather than in writing), you need to practice out loud with someone else. And it is good to do it in person (rather than on the phone) because in-person puts you more on the spot. Then the telephone becomes a somewhat easier way to do it. Pay attention to the pressure you feel - because you will feel

some - and practice until that pressure does not interfere with your practice.

We are not saying that your negotiations will follow in exactly the way the practice points set out, of course. However, one main goal of practicing is simply to develop the *nerve* to make the requests, offers and arguments you are going to need to make. Getting more comfortable with the give and take of negotiations, and especially the feelings that come up in that context in a variety of situations will only help you do what your own negotiations call for, and it really isn't possible to do too much practice. Just remember that your situation will be very specific to you, and don't try to mold the actual facts of your situation to the hypothetical facts of the practice.

The Tips

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1. ***Mention bankruptcy early and often during negotiations***. Regardless of whether you actually plan to file for bankruptcy, hinting to the creditor or debt collector that bankruptcy is likely unless the debt can be accommodated may cause the creditor or debt collector to lower its settlement offer. In most Chapter 7 and Chapter 13 bankruptcy filings, the entire amount owed to the average unsecured creditor is discharged. That means that most unsecured creditors get nothing even if they spend money and time trying to protect their rights. They know this, and *most* would rather settle the debt for pennies on the dollar than wind up with nothing. ("I'd hate to have to declare bankruptcy, but it looks like I could, and that I might have to...")

Preparation Point: *Before* beginning any negotiations, consult a bankruptcy lawyer so that you know what the general effect of bankruptcy on your specific situation would be, how much it would cost, how long it would take, and how it would affect you. Many bankruptcy lawyers will give you a free initial consultation, but even if you have to pay them, knowing these facts will make your threat of bankruptcy credible and will save you far more than you spend on the lawyer. Don't be satisfied with a *general* idea of what bankruptcy is and how it works - no doubt you already have that - know specifically what it would cost and how it would work in your own situation. Knowing these details is what takes the threat from "background noise" which every creditor knows is a theoretical possibility to a believable warning. And that difference is all the difference in the world.

Practice Point: after you have learned about bankruptcy, what it costs and the rest of the "preparation point" material, consider how you might drop it into a negotiation discussion. Write out and practice the way you will do this so that you can say it *smoothly*. For example, let's say you find out

that bankruptcy would cost you $1,500 and would be a nuisance, but that it would make sense for you if you cannot make $25,000 worth of debts (out of $40,000, say) go away within the next six months. That is the sort of thing you will want to know (and you will want to know exact numbers of what it would cost, what you need, and why you need those numbers) from your consultation with the bankruptcy lawyer.

Now practice saying that you have considered bankruptcy but would rather pay (a specific) creditor rather than do it: *"we are considering bankruptcy if we can't reach some agreement, but we would rather pay X company if possible."* Have your practice partner challenge you in some way: "why can't you pay us?" or "how much do you need?" or "what's in it for me?" Your specific knowledge of the way bankruptcy works will make your answers to these challenges believable.

Important Note about "Universal Default"

Mention of bankruptcy should only be practiced with a practice partner you know and trust. That is because other people in business will act on what you say about bankruptcy. At the extreme end of this is something called "universal default," which is a provision many credit card providers used to include in their contracts (card applications or "terms"). Under a universal default, if you defaulted on one credit card, other, unrelated banks could also declare you in default, triggering reduction of credit lines and a drastic increase in interest costs. Now, thanks to The Credit Card Accountability Act, things have changed to an extent, but not completely.

You simply do not want to risk having this occur, and therefore you must keep any discussion of bankruptcy (usually a "defaulting" condition) with strangers to a minimum. *Likewise, your debt negotiations will need to be coordinated - if you have three credit cards with different banks, for example, you cannot be sure that if you stop making payments on one of them that the others will leave your credit cards with them the same.* **You have to regard all your credit accounts and information as at least potentially connected**.

2. ***Know all of your debts***. If you are going to make sacrifices to settle your debt (which any payment at all, as well spending as the time and worry required to negotiate, will certainly be), make sure you get enough of it settled to make a real improvement of your situation. You might share this with the creditor as you explain your offers. ("I have $50,000 worth of debt - if I can't get it all down to a manageable level, I'm just going to have to fight them all or declare bankruptcy...")

Preparation Point: Again, before beginning negotiations with any creditor, know in exact detail what *all* your debts are - including debts to family members or other debts you might consider too sacred even to mention. If you cannot reduce your overall debt load down to a manageable burden, you won't be in a better position after you finish negotiating than you were before you started - and you might be in a worse position. Know exactly what you are facing from the beginning, and know exactly what you need to accomplish.

Practice Point: Play with the numbers a little bit. Figure out what you would need on each account and start to develop a sense of how these numbers affect each other: if you get one debt reduced to 30% instead of 50%, how does that affect what you need from the others? Developing a sense of the overall picture and how the parts fit together is important in coordinating the whole negotiation so that you reach a workable solution. Remember that things like car repairs and other emergencies come up, so give yourself some slack there.

3. ***Know the status of your debts - their legal character and priority in your life - and negotiate with the debt collector or creditor with the debt's status in mind***.

Preparation Point: Some of your debts (like taxes, child support, or student loans, for example) are almost completely nondischargeable in bankruptcy, some debts are tied to ("secured" by) specific assets (often houses, cars and sometimes furniture or other things). These debts are "favored" debts. The more favored the debt, the less easy it is to get rid of it without a sacrifice, and the more you will probably have to pay to settle the debt.

Practice Point: put in the time to understand your debt. Have your practice partner ask you about it. Answering questions - out loud - about whether or not you can get away from the debt puts things in an entirely different perspective. Trust us - this will help light a fire under you to get this done.

4. ***Know the legal character of each of your "counterparties" - the creditors or debt collectors, too. Is it an original creditor, actual collector, or debt buyer?***

Preparation Point: at the surface level, your counterparty's legal character will likely control what it can do *for* you. It will also give you a pretty good idea of what it can do *to* you, as well. Does it have the evidence it needs to beat you in court? Most debt buyers simply do not have what they would need to beat you in court, and some original creditors don't, either. You will need to know what you can about your counterparty's status before you start negotiations, and one point of the negotiations will need to be getting more of the information about what they have that can help or hurt you.

Practice Point: practice asking your practice partner for the information you need to know about the debt or the debt collector. For example, if it is a debt collector, you will want to know what proof it has of ownership of the debt. You will want to seek verification of the debt (as we mention below), but you will also want to follow through with a more specific and pointed request for information over the phone. Practice saying you would like to see what they have proving they legitimately own the debt and asking them to send it.

Every debt collector *does* have to verify the debt if you ask within 30 days of their first contact with you, but they *do not* have to give you all the details you would like to know, so practice asking them to send you the information you need ("I'd like to see the complete bill of sale showing you bought this debt from X company;" "I notice you didn't include the schedule listing the specific accounts included in your bill of sale, could you send that to me?"). You will want to remember to get everything you need and you will want your request to be smooth and sound appropriately "righteous" without being obnoxious.

While practicing these things can seem "silly" or "ridiculous" at times, the difference between practicing and not practicing can be the difference between receiving or not receiving information that could free you from the debt completely. You want what you say to be natural and politely forceful, and you don't want to forget things. Practice is the way you achieve these goals.

5. ***Know what you have***. Know what you make and how much money you have or can get in order to make a deal if it is a really good deal - and know what you have in terms of what you have to lose, too.

Preparation Point: If you are going to make a deal, you must be able to afford it, or you will only make things worse. Before you start negotiating, you need to know exactly what you can afford to pay - and what you cannot afford. You will also want to know what you have in terms of what you have to lose, too, as we will explain below. Part of this whole process should be to give you complete clarity of your financial position so you know exactly how to improve it. None of this is normally something you will want to share with the other side unless it is clearly to your advantage to do so and it is less than your counterparty's true final offer. We discuss the time involved in negotiations below, and you should ***not*** jump the gun on giving away this information.

Practice Point: this time your "practice" is simply to make sure you have the cash or else explicit agreements for money that you can count on if you need them in order to make a deal. If you're

going to need to ask your mother-in-law for a loan to get this done, find out if she'll do it before you start the negotiation process.

6. ***Know the legal character of your assets***.

Preparation Point: Like your debts, your assets have different legal qualities that make them easier or harder to take away from you. Cash in the bank is easy for any creditor or debt collector with a judgment against you to reach. Some assets, like 401(k)s and Social Security benefits, on the other hand, are almost impossible for any creditor (other than the federal government) to reach, and some assets, like homes and household goods, are pretty well protected - up to a limit. You must know the status of your assets. In general, ***you should be very reluctant to spend a more protected asset on a less favored debt***. Likewise, where it is possible, you will want to start directing your money into more protected assets rather than less protected ones, and paying more favored debts rather than less favored ones to the extent you have a choice. Again, this information is not something you will want to share with the other side.

Practice Point: we discuss the legal qualities of different types of assets in the materials below. Some of them, like Social Security benefits, are immune from all non-governmental collection. Others, like your house, have some immunity from debts that are not secured by the assets. You need to do a trial "matching" process in which you begin to see how what you will pay is linked to the quality of asset you would use to pay for it. Until all the negotiations are over, you should not change any asset in a way that would reduce its level of protection.

Taking money out of a 401(k) will also have tax implications. Know exactly how that would affect you. Know the tax implications of anything you do. If that means consulting an accountant, then do it.

7. ***Know your worst-case scenarios***. Know what will happen if nothing good happens or comes out of the negotiations.

Preparation Point: You need to figure out how important it is for you to negotiate and settle. What will happen if you do not settle? Can you declare bankruptcy? Would you want to? How bad would it be if any or all of your creditors and debt collectors sued you? You may or may not want to share this with the other side, but you should at least be very careful about doing so. Consider also that most creditors (but not all) are extremely reluctant to sue you. This means that in reality some of them will not sue you at all, and others will wait a long time to do so, which makes your *realistic* "worst-

case" scenario somewhat more flexible an idea than you might have considered.

Practice Point: practice telling your practice partner that unless they can reduce your debt to __ dollars (or %, or dollars per month), you really don't see how you can pay the bill at all. Have your partner confront you: "well, how much *can* you pay?" and your response - "we may just have to declare bankruptcy or fight them all if we can get any cooperation." Notice how uncomfortable this is - and be very clear that the person who wants *you* to pay without an agreement from them is trying to get you to *surrender* in an important way.

If you give someone money without getting anything in return, you will be either punishing the people who *will* work with you for the sake of those who *won't* (unfair) or making sacrifices for someone who obviously isn't worth the sacrifice. However, you will still want to keep your own overall goal in mind, and if you can get where you need to go without cooperation from some of your creditors, you will want to do that even if it means paying people you don't like money you don't want to. But not in practice sessions.

8. ***Know what you have to get accomplished in the negotiations***. Before going into negotiations, know exactly how far you will go before it doesn't even make sense to negotiate at all. As we said in the practice point above, you must know your overall goal and make your decisions consistent with your own goals and not someone else's. Because your worst-case scenario is somewhat flexible, what you have to get out of the negotiations might also seem to have some flexibility, but for planning purposes we suggest that you set this number "in stone."

Preparation Point. Negotiating has its risks and costs, and you also may decide to make some sacrifices to get things straightened up and flying right. Know exactly how far it makes sense to go *before* you start negotiating so you are not swept away by the momentum of the negotiations and the desire simply to "make a deal." You would be surprised at how much pressure you can feel to make a deal and get things settled and behind you, and that is why we suggest setting your bottom line "in stone" - so it can be an anchor that keeps you from giving in to the tendency to give more than you planned.

One of the great skills in negotiating is to be able to keep looking at the proposed deal with fresh eyes and a willingness to walk away. When someone says, "you've already agreed to pay us $500 per month, we can make the deal if you'll go up to $600..." you need to know whether you can or should do that. There is a point where even one dollar more is the straw that breaks the camel's back.

Know that point.

Practice Point. Same as above: practice "walking away" or threatening to do so and note the way you feel about it so that you can keep the feeling from stopping you when the time comes.

9. ***Aim for 30% or less***. It will take time for that to happen, but most *unsecured* creditors will settle for around 30 to 50% of the debt if you keep pushing, and they will sometimes take even less (sometimes much less) than that. Therefore, you should start with a low offer (around 10 - 15% or less) and negotiate from there.

Preparation point: Your final number should be **first**, as good as you can get, **and second**, *no more than you can afford*. If it doesn't do you any good to settle for more than 5% of the debt, for example, then that will simply have to be your bottom line - don't agree to more than you can afford to pay. But even if you *can* afford 50% you should push for the lowest amount you can get. This will take time and persistence, but do the math: the time you actually spend negotiating and preparing for negotiating will probably pay far more than anything else you could do with your time. Likewise, your credit report will probably take just as much of a hit if you save 50% as if you save 75%, so get your money's worth.

Practice Point: Practice suggesting the number you decide is your starting point. It will sound bold. Have your practice partner say something that reflects outrage or skepticism ("You want us to accept only FIVE dollars on this? The debt is for two hundred dollars!") and work with that in a way so that you can hear the skepticism without giving up. Have your partner say "you're going to have to do better than that, or I can't even talk with you at all!" and your response: "well then, do you have a supervisor who *could* talk with me about this?" Of course you are reading those statements here, but remember, things always sound different when they're said out loud to or by another person. You need to hear it and practice your response.

10. ***Have cash on hand to make payments***. Creditors are more likely to settle for immediate payment. The more you can pay immediately, the more likely you are to get a lower settlement offer. Don't tell them that you have it.

Preparation Point: you've heard that “a bird in hand is worth two in the bush.” In terms of debt collection, however, a dollar in hand is worth far, far more than a promise of two dollars over time. Some debt settlement consultants therefore suggest that you cease all payments for a time prior to beginning your negotiations. If you do this, you ***must save*** the money so that you can use it to make a

lump-sum payment. This strategy does have a price in terms of credit reports, though, and it also makes getting sued more likely. We suggest therefore that you invest in prepaid legal services designed for debt problems if you are going to adopt this strategy. However you generate the cash-on-hand, however, you must not share information about how much or where it is with the debt collectors.

Practice Point: set up the system you are going to use to accumulate money. It could be keeping cash in your house, a separate bank account, or an escrow account with a debt settlement company, but the crucial point is to begin to put the money aside *and leave it there*. Remember that if there is a judgment against you, a bank account is not necessarily a safe place to put the money.

11. ***Negotiate your credit report***. Insist that the creditor either remove negative references from your credit report or all reference to the debt at all. This should be a part of your *first* offer, and you should maintain it as a "secret" priority throughout your negotiations. That is, whether you emphasize it or not, credit repair as much as possible needs to be a condition of any offer you make. The reality is that, over time, any credit repair you can manage may well be worth more than the actual dollars you get the creditor to give up - **and** any credit repair you manage will not be taxable, either.

Preparation Point: If you are giving the creditor or debt collector any money at all, one of the things you need in return is a reduction in the harm they're doing to your credit report. It costs them nothing to change your report, and at the same time, because it will lower other costs and damage to you, it could make it possible for you to pay them more in the settlement. On the other hand, their not repairing your credit increases many of your other costs and lowers your ability to pay the creditor anything in settlement. You need to understand that as much as possible prior to negotiating so that you can use the fact in your negotiations.

You will want to get your credit report before you start talking to your counterparty. Know what they've already done to you, and plan to ask them whether that is all that they've done. When you make a deal with them the deal will probably include some "integration" clauses - that is, a statement in the written deal saying that the words of the deal are the complete deal, that you knew everything you needed to know, and that nothing that *isn't* written down in the agreement is part of the deal. One of the effects of those provisions is to make it hard for you to say you want them to repair credit damage you didn't know about, so make sure you discover *everything* they've done.

Practice Point: practice making a settlement offer for an amount of money and saying "of course I'm going to need you to repair my credit report if you have put any information on it that

damages it." Have your partner express skepticism or refuse in various ways so you can say things like, "I know you can do it if you want - and it won't cost your company anything" or "negative credit report would affect my ability to pay you as much - if you can repair my credit there's a better chance we can get this done."

12. ***Prepare your "retreats" ahead of time and negotiate consistently***. Know and make the arguments in favor of every offer you make, and know in advance what your next offer will be.

Preparation Point: negotiations develop momentum all their own, and changing directions can kill the negotiations completely. That is, you intuitively know that starting with an offer of 55% of the debt cannot be followed by an offer of 50% - that would be considered "bad faith" negotiating by almost everybody. So you must start low and work your way up slowly in principled steps so that you do not surrender too much at any one time, and so that you get something in return for every step you do take.

Practice Point: in an important way this is "where the rubber meets the road." Decide your points of retreat ahead of time and practice them with your practice partner as we discuss in the book below. Practice with your practice partner where you make a proposal, get an argument and then a counteroffer, and then make another proposal and argument. You want to know every step you will take and get into practice defending each proposal you make and attacking every offer they make.

"Attacking" may be too strong a word here. The point is to challenge their offer and suggest reasons it isn't "good enough." This is simply the way any true negotiation goes, and we suggest practicing it with shopkeepers whenever you are about to buy something. Most of them will bargain with you - and as you get better at it you will notice that they actually like to do it.

13. ***Never negotiate "against yourself."*** Do not make two offers in a row, and always make sure you get something in return for everything you offer to give up.

Preparation Point: if the other side says, "that's not a good enough offer," you must resist the impulse to make another offer you think *would* be "good enough." Instead, you can suggest they make a counteroffer. You will likely be tested on this very early and often in the process if you are negotiating with a large company or a debt collector, because your offer will almost always be much lower than the first person talking to you has authority to accept.

Part of what takes time in negotiations with larger companies is for the people you are talking to to realize - gradually and reluctantly - that *they* will not be able to make you give up and agree to give them as much as they need in order to settle. It is only when they "get that" that they will pass you up the chain of command to someone with more authority to make that decision. One point of all the preparation you have done is to empower you to be patient as this happens.

Practice Point: practice making an offer where your partner suggests that you will need to make another offer before any negotiations could take place and your response to that.

14. ***Don't solve the other side's problems in negotiation. Do try to solve as many of yours as possible***. Make sure that if the negotiations break down the other side is in no better shape than it was when you began negotiating, and try to make sure you are in better shape than when you started.

Preparation Point: we discuss in this book many problems that the other side has, from ignorance and indecision about what the best option would be in negotiating (or not) with you to legal issues proving the amount of debt and that it is yours. You must not admit things or tell them things that solve these problems for them. At the same time, you will want to clarify some things if possible: you need to know what kind of proof they have of ownership or size of the debt, or that you are the proper person to pay. Remember that even if you really did owe the debt at some point they would still have to prove that fact in court if the matter comes to trial. If you can, find out if they can. A lot of times they cannot do that, and it is always expensive for them to do so.

Practice Point: practice asking for the evidence they will need: proof of ownership, proof of the amount of debt, whether they have the original contract showing you on the credit card, or what other evidence they have that you are the person who owes the money and that you agreed to pay it. Practice it without admitting anything. Have your partner try to get you to admit things, and also to ask you for information about jobs and banks: "are you still banking at __, Mr. Jones?" "Still working at __, Mr. Jones?" Practice deflecting these questions without answering them or defending your refusal to answer them in a way that doesn't sound either too aggressive or smarmy. ("I'm really calling more to find out what you would be able to do at this point, Ms. __, rather than to tell you information about me...")

If they insist you give them employment or banking information, ask them why they need it, and if they still insist they do, then you must decline to give it anyway and simply take your chances that the next negotiator will be more reasonable. They do not need this information, and they only want

it so it would be easier to sue you - if you surrender the information, you make it more likely that they *will* sue you.

15. ***Remember the person you are talking to is human, and don't forget that you are, too***. Reach out to the other person while also controlling your own human responses.

Preparation Point: negotiation always involves at least two people talking or otherwise communicating with each other. This means that even negotiating tactics that you might not think would make any difference against a "big business" have their place in your negotiations. So for example whistling or drawing in your breath in response to their offer and saying things like, "whew! I don't see how I could ever do that - do you think you could offer go a little lower?... [suggesting they negotiate against themselves] but let me think about it and get back to you..." can work even in negotiations with a lawyer for a company as large as Citibank. Likewise, if they scoff or express disbelief or outrage at your offer, be aware of the "personal" tactics so that you do not fall for them. There is no offer you can make that would *truly* shock either a lawyer or debt collector.

We also discuss your negotiating "persona," which is the personality you project as you talk to the other side: are you nice? are you harsh? Do you try to seem "reasonable?" or would it be better to seem kind of aggressively crazy? You should plan this aspect of your strategy so that you make sure that what you are doing works for you.

Practice Point: practice the personal negotiating techniques here - practice drawing in your breath when your practice partner makes a settlement demand - any settlement demand at all, even if it's all you need. Remember that negotiations generally are one-way things: if they make an offer, they won't casually take it back, the next offer will always (for all practical purposes) be better.

Practice different personas with your practice partner, including a harsh and aggressive one. Notice how it makes you feel and learn how to control your tone so that you can maintain whatever persona you choose.

16. ***Know the hidden costs of settling or of not settling***. Coming to a debt settlement can have tax consequences; on the other hand, damage to your credit report raises your costs for housing or apartment rental, insurance, and many other things. It can even affect whether or not you can get a certain job.

Preparation point: as we discuss below and in Appendix 1, settling a debt will often create "income" for income tax purposes. That is, if an original creditor agrees to reduce your bill from $10,000 to $5,000, the I.R.S. will often consider that "income" that you have to report and pay taxes on. You must *know* the tax consequences - in dollars and cents - as well as possible before you enter the negotiations because it will affect your bottom line. That means knowing your tax bracket and being ready to "do the math."

Remember, too, that taxes are much more favored debts - and that governments can collect from assets that would not be available to private creditors or debt collectors. That means at one level that if you are settling a debt with an unsecured creditor you are creating a much more favored debt that will be far harder to avoid. Be very careful about that and make sure it's what you want to do.

Not every debt you manage to resist can legitimately be considered "forgiven," however, and you may not have to pay income tax on some of them, as we discuss below. Also, there are no tax consequences if the bank forgives fees or interest, or lowers your interest rate prospectively because these are amounts that never truly exist other than as estimates or projections.

Not settling the debt has obvious costs in terms of the risk of litigation, for example. But it also has "hidden" costs - the way a damaged credit report will hurt and continue to hurt you by increasing your costs of many things. This can be hard to quantify, of course, but you should be aware, to the extent possible, of how much leaving the debt unsettled will cost you - it's part of your incentive to find a workable settlement.

Practice Points: to the extent possible, figure out the costs of not settling and look for ways if possible to neutralize them. We have discussed prepaid legal services as a method of neutralizing the risk of litigation, but discovering the cost of bad credit and neutralizing that will require research into your own specific situation. Still, everything you can do to strengthen your bargaining position by reducing the threat posed by the debt collector is highly worth doing.

Chapter Two: Negotiation Basics

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In the next two chapters we look at the process of negotiation itself. There are certain features common to all negotiations, and we'll discuss them in Chapter Two before beginning to look more specifically negotiating in a debt-problem context in Chapter Three. In Chapter Four we create an adaptable debt negotiation plan, and then we look at specific issues that might come up in your negotiations. We start here, though, with a very basic question: why you would negotiate at all?

Many, and perhaps most, people do *not* negotiate when facing debt problems, and our advice has always been to limit conversation with collectors unless you have a specific purpose for that conversation. It can seem that not talking to the collectors is the safest course of action, and in the short term it is always the least confrontational and "easiest." But there are reasons and times you will want to do it.

Why and How to Negotiate at All

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As we said above, if bills are mounting up, and you are having trouble paying them off, it sometimes makes sense to negotiate for lower payments. The reasons you *would* negotiate are probably clear, no doubt. First and foremost for most people, you can get rid of the cloud of being sued and possibly having things taken away from you without warning.

If you can get someone you owe money to, to accept less in payment (or in the case of credit cards, either to accept less in payment or a lower interest and fee rate), then you will save money and reduce the harm to your credit score, and this sort of agreement may be the *only* way for you to be able to afford to make the payments in any event. That much is pretty obvious. It is a fact, however, that most people do not do this. Why do you think that is so?

Fear

Of course we don’t really know what the people who are *not* talking to us are thinking, but we can guess what’s going on based on what the people who *do* talk to us are saying, as well as what

people being sued have said. While there are legitimate reasons to be careful about negotiating debts, most people who fail to negotiate do not negotiate because they are *afraid* to do so for some reason.

It is most likely either a fear of embarrassment, because it's painful to do so, or because people have other things not in their best interests going through their minds. It *does* seem easier not to do it, at least at first. These reasons are all very understandable, but none of them are the kinds of reasons you want to be controlling your actions over the long run, right? **Getting up your nerve enough to negotiate can pay you very well very quickly**, and even if you do not ultimately reach an agreement, there may be other ways negotiation can improve your situation.

Why be afraid? It's pretty natural. You'll be talking to people and (thinking you are) asking *them* to do something for *you*, something they may tell you or suggest that you have no right to ask for - or you might feel this way on your own. In addition, people are often hampered by feelings of guilt or failure, and they simply do not want to acknowledge their need or to do anything that would suggest the desire to "get out of" a debt they incurred. The people you are talking to may have some of those feelings about you, too.

One of the purposes of this book is to help you get over those feelings if you've got them - they will keep you poor.

Get Over It

You must get over the feeling that you are "asking" for something in order to be a good negotiator. *If you are asking for something for yourself, you are ignoring an important principle of negotiation*, which is that for the most part **people act for their own benefit and not yours**. You must understand the benefit of what you are offering to the other side and frame your negotiations in terms of that benefit. You cannot do that if you think you are "asking" for something from them.

Negotiating is *always* a two-way street, and as obvious as that may be at some levels, it runs counter to a deep-seated feeling that most people have when they're in debt. We'll address that issue a lot in the pages below. For now, though, remember that people (businesses) essentially always act for their *own* advantage, and that people do, nevertheless, successfully negotiate for reduction in amount of debt or the terms of that debt all the time. That means that creditors *can* be made to see the advantage for them of negotiating. It is possible, and you can do it too. The single biggest factor in succeeding is probably knowing and expecting that you can do it and then setting about it.

Some Caution is Needed

There are some reasons to be cautious about negotiating. All negotiation involves the exchange of information, and some of that information could be harmful in the hands of someone suing you. Also, you could hurt yourself if you make a deal you cannot afford. We will discuss these pitfalls of negotiation throughout the book.

Factors that are Part of All Conflicts

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At its most basic and universal level, negotiation is a form or part of conflict, whatever some people want to call it. At least it occurs in the arena of conflict and will often ripen into full-scale antagonism if it is not resolved. This is not necessarily a *personal* antagonism, you understand, just that there are opposing interests and the potential for winning and losing, although sometimes it can get *very* personal.

Positive Thinking

You've probably heard a lot about "win-win" solutions in negotiations, where with a little creativity and magic dust both sides can get even more than they wanted in the first place. In debt law, at least, that doesn't really happen. There is rarely an opportunity to find a solution which actually enriches both parties at the same time.

In other words, we're not talking about the power of positive thinking here. Most of the negotiations we're discussing here involve a given, limited number of dollars, and your paying fewer dollars means someone else taking less. Giving the collector anything at all means you have less in your pocket. On the other hand, there are some important "asymmetries" to consider as well as the fact - crucial in debt negotiations, that a creditor's willingness to *accept less* will increase its chances of *getting anything*. That's a biggie, and then of course it's also true that litigation is expensive and time consuming, and both sides are better off if they can avoid that. So both sides always have a reason to deal.

Five Factors

For every conflict there are always at least five factors that will be involved for all parties. Knowing them will help you look for opportunities and avoid problems:

- Risk
- Reward
- Uncertainty
- Costs
- Personality

First we'll discuss these factors in general as regards the debt, and then we'll look at the separate risk involved in the process of negotiation itself, because negotiation has its own risks to consider apart from the debt itself. Then we'll look at what we call the asymmetries and see how they affect things. Our goal is to develop an accurate picture of the factors on both sides of the table, so that you will have a clear view of how the factors can or should affect you and a better view of how they affect the other side. You need to remember that all these factors apply both to you *and* to the other side. They are the underlying realities that will dictate the way the negotiations will go.

"Risk" or the Stakes Involved

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Risk can be divided into two categories: the *amount* of harm that would occur if you lost, and the *chance* you have of losing and suffering that harm. We'll look at both of these factors from the debtor's and the creditor's point of view. The reason we do this is to give you a clearer perspective on negotiating in general. Negotiating is a little like Judo, and there are important "pressure points" that can be used to turn things to your advantage. Understanding the nerve centers - yours and theirs - is the way you begin to develop your strategy to do this.

The Amount of Harm for the Debtor

You might think that the amount of harm risked by people in debt would be obvious and clear, but it is actually misunderstood by most people; it will help to make it clear. People in debt often *overestimate* the amount of money immediately at stake in any form of debt collection because they don't understand the willingness of debt collectors to take less than they say they want (see our

discussion of discounting above) or they worry that they'll end up having to pay the attorney's fees of the debt collector (which rarely happens, although it can).

On the other hand, people often *underestimate* the amount of money at stake over the long run, since many of the costs and penalties are not obvious. Most people do not think about how bad credit can effect their costs of living from insurance to apartment rental, and they underestimate the long-term costs in lifestyle and social consequences of bad credit, as it always saps money from your lifestyle and even affects your ability to get certain jobs.

There is a risk for the creditor/debt collector also, though, that you must not forget. They could fail to *collect* anything at all, or they could waste money on a lawsuit and collection and collect less than they otherwise could collect if they followed some other course of action, like going after someone else or simply writing off the debt completely. For small businesses, the amount of money involved (however much or little) may be meaningful to the business's future. For large businesses it will probably be meaningful *at least* to the career of the person you're talking to.

The person on the other side of the table has his or her own good reason for wanting to get things right, in other words. It is usually not possible to know for certain what the right thing to do is – for them or for you, but you can be sure that it really matters to them one way or the other, and they want to get the best result they can just as much as you do.

Increase Your Perspective

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To increase your perspective, let's briefly consider what could happen to a debt collector if it makes the wrong decision or tries to proceed against someone committed to keep them from collecting:

- First, they could spend a lot of time and money making telephone calls and sending letters to you. During this time - and at all times prior to the collection of the debt - they are earning nothing on whatever they spent to obtain the debt.
- Next, they could hire a lawyer, which requires time and money, and bring suit, which involves more time and money.
- You will defend yourself, and using the materials available at Your Legal Leg Up you will have an excellent chance of actually winning; against a debt buyer, you will *probably* win. At a minimum

you will add another year or so to the time they must wait for any result.

- Let's say they win - although, again, this is far from given. At this point they can begin to try to look for your assets. They can hire a law firm or investigator to try to find your job, or they can spend money trying to find your bank accounts. You can change bank accounts fairly easily; some people can change jobs. In any event, there are many exemptions to what debt collectors, even with a judgment, can take.

- If you make enough money so that the exemptions to collection do not protect you, or if for other reasons it seems like a good idea, you can declare bankruptcy. This requires the debt collector to spend time and money filing a claim, and in effect it wipes out the judgment against you and adds another year or more to the time before they collect anything. If they collect at all, it will be a very small fraction of what they wanted to get in the first place. With foresight, you can set things up so the bankruptcy does not take very much from you.

This process is not without costs to you in time, money and worry, of course, and there are reasons bankruptcy might not be a good decision, but for now you should be able to see that if you will stand up and fight you can create a major problem for anybody who would try to fight you and take your money. By following the process we outline above, you would likely make the collector wait for three years to collect anything, and only be able to collect it after paying lawyers to fight for it in two completely different court systems. At the end of that process, if they stick it through to the end, they might come out with ten cents or less per dollar they sought, and probably far less than they would have to spend in order to get it.

Chance of Losing

In addition to the *amount* of potential gain or loss, the other part of risk is the *likelihood* of winning or losing, and for this - in debt law - there are really just two issues. First is the question of ***legal risk*** (as might, for example, be determined by winning or losing a lawsuit). Second is *practical risk*. This depends upon whether you have anything the debt collector could get from you even if it won a lawsuit – this is called “collection risk” by lawyers).

Collectors usually completely ignore the possibility of losing the case - most people do not defend themselves at all and allow the company to take a default judgment. You will want to increase

their awareness of the legal risk, however, and to increase the risk itself for them wherever possible. That requires some care not to give away too much information, or to make any admissions, in negotiations. You will also help them become more aware of the possibility of losing if you assure them through words and actions that you will fight and keep fighting, and that it will cost a lot for them to beat you.

Spending a lot of money does wonders for your awareness that you might lose the case, wouldn't you agree?

Collection risk is usually more significant (and generally the only kind the debt collection lawyers consider at the beginning of a collection action), but in the case of debt buyers, especially, the legal risk can also be quite significant for the debt collector. You should not ignore this risk/opportunity because you have an excellent chance of beating a debt buyer in a lawsuit if it comes to that. One goal of your negotiation will be to make sure the debt collector continues to worry about collection risk, and you should never give the impression that if they sued you, they would easily or quickly be able to collect all the money owed even if they won.

Reward

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Reward is the other side of risk; it's your goal. In a debt collection scenario, a debtor doesn't have much chance of actually winning any actual money from the collector, although this is not to say that peace of mind, and security don't count. It's just that you will not get these from collection or negotiation process so much as the simple fact of its successful conclusion. (Sometimes a counterclaim, as we'll discuss below, can change this dynamic, especially if it allows you to get a lawyer involved on your behalf.) If you win a lawsuit you can probably make some improvements to your credit report as well as avoid paying any money. On the other side of that equation, the debt collector could hope to win and collect all the money (supposedly) owed – or to negotiate for it.

For debt buyers and debt collectors, their motivation is simply, and only, money. They obtain no reward from suing or hurting you, damaging your credit or prospects, and they also gain nothing by being nice or playing fair (so don't depend on them doing so). They are in it strictly for money. Original creditors, on the other hand, face a much more complicated situation, as they must be

concerned about their reputation in the community, and negotiation with you is an opportunity for them to enhance it, as well as a chance to hurt it. We'll discuss these factors in much greater detail as we discuss particular counterparties.

Uncertainty

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Uncertainty is related to risk, obviously, but what it means in negotiation is the fact and feeling of not knowing what to expect. For example, you enter a negotiation with the hopes of winning (reward) and the fear of losing (risk). But you don't how much the other side would be willing to accept, what they really want or require, how far they'll go to get what they want, and whether they have what they need in order to win if the matter goes to trial. You don't, and really can't, know some of the most important factors, in other words: what or how much they want, what they fear, and what they can or will do. These are all areas of uncertainty. Inexperienced negotiators have a very hard time with uncertainty and tend to discount their strengths and emphasize their weaknesses in the face of that uncertainty.

You must remember that the other side also has uncertainty. They don't know how much money you've got that you could give them, how far you'll fight if the negotiations break down, or whether you will fight well or just give up. Most of all, they don't know whether or how fast they will be able to find enough assets when it's all over to justify the expense of pursuing you. For many, and perhaps most, businesses, deciding to sue you is a very difficult question.

Uncertainty is a fundamental part of negotiation. You will try as much as possible to gain objective clarity and certainty on all the uncertain factors you can, before and during negotiations. At the same time, you will want to shape *their* ideas of what they know or think they know, and if you cannot give them a feeling of certainty that is to your advantage, then you at least want to leave them with uncertainty about these areas. In other words, you will *say* you will fight till you drop, but will they believe you? Even if they do not, you want to leave them uncertain about just how far you can or *will* go, because anything that is unknown is potentially risky, and the presence of risk reduces the value of any choice of action. They will have the opposite goal, of course, and will try to keep you guessing and worried.

To put that into perfectly plain English and a set of rules, whenever you are negotiating about a debt that you are having trouble paying, you never tell them where you work, where you bank, whether

you have money you expect, or any other financial good news, because this not telling them this information leaves them with uncertainty about whether they can collect anything they happen to win if it goes to litigation.

Never express a desire not to litigate (or not to continue litigating) or a fear of being sued. You must keep them, as much as possible, in a position of uncertainty about all that. You must try to make sure that anything you say to the collectors always *increases* their perception of their legal risk (chance of losing if the debt goes to litigation) and *never dispels* the size or importance of collection risk in the debt collector's mind.

You don't want to admit owing the debt even if you are about to pay it. *If they can get you to admit owing the debt or to the amount of the debt, that would be a major advantage to them and solve their biggest legal problems.* You must not do that for them! They will also want to keep you in the dark about the things you don't know. You should never expect the other side to tell you they will not sue you – and you should think twice before believing them if they say they will.

Costs

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All conflict has costs. Time must be spent, lawyers are often hired, people paid, anxiety lived with. These are all costs of conflict. People in debt often think only of the *emotional* costs they *themselves* are facing, i.e., feelings of insecurity and vulnerability, plus the potentially mounting fees, annoying telephone calls, etc. Those are the costs they know or fear. But the creditors or debt collectors also face costs, and in reality these costs are often so substantial that many creditors will not pursue the people that owe them money at all under any circumstances. They simply regard a certain amount of uncollected bad debt as a cost of doing business.

When you are negotiating, you need to remember these costs. If push comes to shove, the creditor will either have to sell your debt to somebody else for a steep discount (so why not give you that discount and save the trouble?) or hire a lawyer and sue you. And they also must decide whether to sue *you* instead of someone else, as there are probably many people who owe, or supposedly owe, them money. We've discussed risk, and many, many debts cannot be collected at all, with or without a judgment. This means that a collector measures its costs not only against what you supposedly owe, but also against a much lower number that they would expect the debt to be *worth in collection*. Negotiating with you gives them a chance to get more than that at a lower cost.

Understanding the risks faced by the creditor or debt collector can give you a greater appreciation of your strengths and increase your "negotiation posture," the unspoken message you project to people negotiating with you.

Personality

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Personality is a sort of wild card in every deck. Much of any negotiation is determined by simple numbers, but it is certainly true that personality can always make a difference at every stage in the life of a debt. If you show a good personality that is both pleasant and likeable, but also tough and resourceful, you will inspire people to do good things for you. They will *want* to do good things for you (which matters), and at the same time you will *also* change the numbers (which may matter more). Being tough and resourceful, and also likable, are all very important factors in litigation and make it much harder to beat you in court.

On the other hand, showing a bad personality can inspire the collectors to be tougher on you just because they don't like you, and again, it will also change the numbers, because an unlikable opponent is easier to beat in court. Especially with the smaller companies, being nasty can cause the creditor to sacrifice self-interest a little bit to "teach you a lesson." People do not *always* act in their own best interests, and one of your main goals in negotiation or otherwise is to make sure that if emotions get the better of someone else they cause them to act to your benefit rather than your harm.

That said, negotiation is not about making the other person like you; it isn't a popularity contest. Your goal is not to make the counterparty *like* you. As you plan your negotiation strategy, you will want to consider what sort of personality you project. You can be generally reasonable and disarmingly frank, or you might be aggressively reasonable, or even aggressively unreasonable (so long as you don't take it too far). In some situations the outright hostile or even irrational can be effective, but there's a price if you negotiate this way, as the other side may simply decide not to negotiate with you at all for that reason. Or it may move to a "take it or leave it" stance more quickly if you're too hard to get along with.

Whatever style you choose, you want them to like agreeing with you and making concessions more than they like disagreeing. If you're *too* aggressive and hostile you may push them into making a decision just how far they're willing to go. Using a somewhat more mellow style, you might get them to go a little further. But this is something you will want to consider carefully.

Note that by "whatever style you choose to use," we are not talking about making actual concessions or agreeing to give more or take less in the bottom line. We are just talking about the form of the negotiations and whether you try to make them pleasant or not. The more personally aggressive you are, the less comfortable and pleasant the negotiations are likely to be, but this does not make an aggressive style the wrong choice. Perhaps it is on the contrary – inexperienced negotiators tend to put too much emphasis on being pleasant and comfortable. You must try to think of the personality you project as one of your tools in the negotiations – a tool that you will carefully use in order to increase what you get from the negotiations.

The Five Factors, in Conclusion

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Our conclusions here will mostly be obvious, probably. Your goal whenever you act with respect to your debts, in negotiation or otherwise, should be to improve all the factors listed above. You should seek to reduce your risk and increase possible reward, increase your own clarity and shape the opinions of the other side to your benefit. These will be very significant goals of any communication, and especially negotiation, with the other side, and we will spend quite a bit of time in the following materials on showing how to develop a stronger position regarding the debt.

But next we will discuss the risks and process of negotiation (as distinct from the underlying debt) in general regarding debt and its inherent risks.

Chapter Three: The Risks and Benefits of Negotiation

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We have discussed the risks and opportunities connected with the underlying debt, but you now need to look at the negotiation process itself to decide whether or not to negotiate. Negotiation has some separate risks and opportunities of its own that must be considered. Since you are reading this book, you have probably decided that negotiation is a more effective strategy than, for example, silence, although if the counterparty is a debt collector associated with a debt *buyer*, and you do not want to pay anything at all, you would probably be better off simply declining to communicate at all. On the other hand, negotiating might be a good way to pay the debt buyer to go away and to minimize the harm that it does your credit report as it leaves. If the counterparty is the original creditor, you will have more to win by negotiating, but the process may be a little more challenging.

At the most basic level, remember that negotiation is simply one way to get things done, and both you and the debt collector could do other things instead of, or in addition to, negotiation. The way you negotiate can also affect whether those other options remain open or get better.

Negotiation Requires Communication

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Here's an obvious statement: Negotiation involves a certain amount of communication between at least two parties who are trying to persuade one another of various things. What this means, however, is not necessarily so obvious to the inexperienced negotiator. One thing it means, for example, is that the two sides are not arbitrarily shouting counterproposals across the table to each other. It doesn't look like a really long version of this:

"Twenty!"

"Five!"

"Fifteen!"

"Ten."

"Done!"

Instead, each amount must be justified. You want the debt collector to go away and leave you alone, and the debt collector wants you to pay all the money it says you owe to it and more. Both of you will present facts and make arguments you hope will be persuasive to the other side as you also bargain on a number. These facts and arguments will be seeking to persuade the other side of the moral and factual rightness of various claims, but also of their provability (or not) in court. What are you trying to persuade them of? *That your offer represents the best deal available - they should take it, because they won't get a better one either by more negotiating or by suing you*. They're trying to prove to you that if you don't give them the amount they're saying, things are going to get really bad for you.

So both sides are trying to persuade and intimidate each other through the negotiations. And it is in this presentation of facts and arguments, especially, along with any payments made, that the risk for you lies. You don't want to solve the collector's litigation problems while negotiating, since this would make a lawsuit that much more likely.

So what are your counterparty's problems? That's one very important thing you want to know. For original creditors, they *may* have proof issues - they do not have or cannot find the evidence they would need to prove you owe them money (surprisingly, this can be a problem for some very big, well-established companies - like Discover Bank, for example, sometimes). For *most* original creditors, however, the problems probably involve public image and business focus. They would rather not spend the time and money in litigation, and doing so can hurt their reputation. They may also have a statute of limitations problem: it could be getting too late for them to sue you - a problem you may solve if you give them money.

Debt buyers have different issues. They often cannot prove the connection between a debt and the person they say owes the money. There are rigorous issues of proof necessary to establish that you owe any money at all, and there are other difficult legal issues regarding proof of the amount of the theoretical debt as well. In general, debt buyers cannot prove their legal case - *at least not economically* - if you fight them. And debt buyers often have statute of limitations problems.

In negotiating, you run the risk of solving these problems for the counterparty if you say too much or give them anything (so resist the urge to make a "good faith" gesture of giving them a payment - that will just cause you a world of problems). To some extent, in order to negotiate at all, you will act as if the debt is, in fact, yours. If you make any payment, or actually agree on an amount in a

settlement, you will probably give the debt a new life, with a clear amount, liability established, and a new life in terms of statute of limitations. That isn't a problem if the agreement and payment work for you, of course - just remember that either the agreement *or* a payment can lock you into the deal for all practical purposes.

Much of the negotiations themselves will be confidential, but in *some* jurisdictions, admissions (facts that you admit) made in negotiations are *not* automatically confidential and can become evidence. Thus it is a good idea to require an agreement of confidentiality before you do any real negotiating. Even with such an agreement, however, you should probably never actually admit that you owe any amount of money, or that you owe any specific amount.

It is perfectly legitimate and even common for a party being sued or threatened with suit to make or attempt to make compromises to settle and avoid litigation whether or not it really owes anything. You must make sure that any time you characterize the settlement, if you ever have to, you do it as an attempt to avoid or eliminate litigation. Never admit you owed the money, not even in a settlement agreement. If nothing else, such an admission could have dramatic tax consequences by establishing that some part of the debt was “forgiven.” (See our discussion of tax consequences below and in Appendix 1.)

Knowing exactly what you can afford to do and are willing to do is vital. If you actually agree to an amount in settlement and do not pay that amount, you will probably have the worst of both worlds. The settlement could go away without you getting the deal you negotiated for, and you will have admitted to an amount which becomes a new debt, and you will have acted in a way that may be taken as an admission that you owed the debt in the first place or that removes any statute of limitations problems. The collector will certainly argue that you only agreed to the settlement amount because the debt was legitimate and will argue from that, that both the fact and amount of debt are admitted.

You must do your best, however you settle the debt, to make sure that it is not subject to that interpretation, and you must also be extremely careful about what you agree to – never agree to anything just in order to make the other person go away. If you cannot keep the terms of an agreement you make, you would almost always be far better off not making any agreement.

So in summary, the risks of negotiation are that you will say something that comes back to haunt you, and you risk establishing the amount and liability of the debt. If you make an agreement that you can afford, and you do in fact make the payment or payments, the settlement should dispose of the

debt, and all's well that ends well. If the deal goes sour, though, you want to make sure you haven't eliminated all the problems the other side has with its case. Doing that makes the probability of them suing you much more likely.

You never want a settlement that takes the form of a judgment. Judgments give the other side great and arbitrary power to inflict damage on you without notice. Judgments stay in effect for a long, long time, and they damage your credit report for ten years.

A Risk You Might Not Be Taking Seriously Enough

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Another risk of negotiation, and one that is not taken nearly seriously enough by inexperienced negotiators, is that you will get less out of the negotiation than you could. If at all possible, you should get the very best deal the other side will be willing to give you. That means resisting the temptation to take the first deal they collector offers you that it looks like you could afford.

You may have heard of two kinds of buying behavior: "comparison shopping" and "satisfaction shopping." Satisfaction shoppers start with an idea of what they want in terms of price and quality and then search for a product that meets that goal. When they do find a product which "satisfies" them, they stop shopping and buy the item. Comparison shoppers, on the other hand, are more interested in finding the best deal, and they compare various products until they find one that *does* seem to be the best. There's nothing wrong with satisfaction shopping - endlessly shopping may be a waste of time from an economic point of view (although of course you may enjoy shopping): for most items comparison shopping won't save you enough money to justify an extreme amount of shopping. But don't be a satisfaction negotiator when it comes to debt negotiation. If you are negotiating a debt in the first place it is because you need the money and the debt is out of hand - you need to get as close to the best deal as possible, and in almost all cases that deal will be worth *far more* than the time you spend getting it.

Two Deals Compared

We see satisfaction negotiating quite frequently at Your Legal Leg Up, unfortunately, among people being sued for debt. Let's compare two different outcomes that were recently reported during different teleconference phone calls for members of the site. In one, a debt collector was threatening to sue an individual for about $15,000, and the individual "negotiated" (before becoming a member) a

deal for an initial payment of $100 good for two months and then payments of $260 per month for the rest of eternity or until the entire $15,000 was paid. The member did not mention whether he had received a reduction in interest and/or penalties, so that *normally* means he did not - but in this example let's assume he did. Likewise, the individual did not mention any repair to his credit report - suggesting that there was no deal for that, either.

In the second example, the member reported negotiating a deal with an original creditor for fifteen cents on the dollar for a $10,000 debt. In both situations, there was really no doubt that the debt was legitimate - or that the person being pursued could not afford to pay it.

For more details on this comparison, see Appendix 1. It seems very clear that the second person got a much better deal because he took the time and effort to get it. We estimate, very, very conservatively, that he will get paid well over $85 per hour for all the work he did on his case and in negotiating, but that number in reality is probably at least five times as much. More importantly, he changed his life and prospects - he gave himself a chance to get free of the debt.

Asymmetries in Debt Negotiations

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Asymmetries in negotiation are things you can do for the other side (or not do *to* the other side) that don't have any real impact on you (or have much less impact). For example, the debt collector can easily delete negative credit information from your report if it wants to, and that doesn't cost it anything - just as putting harmful information on your report does not gain it anything. It has no economic interest in harming your credit, other than as a means of forcing you to pay, but putting bad information on your report can harm you far beyond forcing you to pay money to it – it can increase the costs you pay for everything from apartment rental to insurance by hurting your credit rating.

Thus credit reporting is asymmetric in terms of effort (takes very little for a large impact) as well as impact (the reporter's action can affect only you directly and not the reporter). To put that into the language of the overall negotiation, you have much more to lose regarding debt than the debt collector or creditor has to win, in a sense. They can win only the money they seek and collect, whereas for you, your whole credit report is at stake.

This asymmetry is a great opportunity. If you do settle on an amount of money to pay, or as you approach that agreement, you should always demand that they delete the negative credit references.

That's a thing *they can do at no cost* and with no negative effect on them at all but is very valuable for you. They may get you to pay more in order to get this done, but remember that in most cases the amount of money this adds to the negotiation pales in comparison to the harm the negative credit report would do you over time. You will want to keep this in mind as you negotiate.

You should be aware, however, that creditors and debt buyers report separately and independently. What that means is that once the creditor sells the debt, your ability to negotiate with it on credit reporting has gone way down. You will still want to negotiate with the debt collector (if things have gotten to them) to change your credit report, but it will not be nearly as beneficial to you.

When you are dealing with an original creditor the situation is slightly different than dealing with a debt buyer in other ways, too. With the original creditor, you can do the creditor's reputation some harm in many situations, but you can also do it some good. It costs you nothing to recommend or endorse the company - or to say bad things about it - and this can affect it a lot in the community and at its bottom line. You can't really do anything to affect the reputation of a debt collector - they never have to worry about the public's reputation.

There is one other sort of asymmetry that you should remember – the very obvious one of how many resources and how much experience your counterparty has. Debt buyers will have more resources and experience in negotiation and litigation than you do, although they have some special legal weaknesses as well. Original creditors present a more complicated question, as their resources may also be limited. Original creditors - even credit card banks for the most part - normally don't want to go to litigation any more than you do.

Chapter Four: Creating a Plan for Negotiation

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You may recall that the first principle of negotiation is that professionals prepare while amateurs "wing it." If you want to succeed in negotiation with debt collectors or anybody else, therefore, **you must *prepare*** for that negotiation. That means that before you even open the discussions, you must know several things about yourself:

It starts with a complete picture of *all* the debts you have, whether you are currently making payments, on time, out of time, or not. Your plan must resolve all of your debts, or you could go through the whole process, use all your resources, and then have one show up and clobber you. You must know every single debt. After that, put together a list of the following things:

- what you have;
- what you can and cannot afford to give up;
- what you might lose in a worst case scenario;
- any alternatives you might have;
- what you want;
- what your strengths are; and
- what your weaknesses are.

As much as possible, even before beginning negotiations, you *also* need to know the same things about the other side of the negotiations.

When you have all this background information, it is possible to take the next two steps – *still* before you even begin negotiations: **strengthen** your own position where possible, and **plan** your strategy. In other words, if you have a debt problem – which means any bill you can't just pay – you need to know the important facts, strengthen your position, and come up with a flexible game plan *before* you talk to the other side. This chapter will help you with all of that.

Why Not Just Wing It?

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You may be wondering why it is so important to do all this preparation before talking to the other side. Why not just start as soon as you get your nerve up to do it? Why *can't* you just wing it?

One reason you don't want just to wing debt negotiations are that there are ways you can improve your position through planning. We'll discuss some of them in the materials below, but they include shifting assets into more protected categories - which could involve opening or increasing funding to retirement accounts or putting more money into your home, among other things. It might involve stopping paying a creditor or some creditors for a time and putting the money aside so that you can offer a better lump sum payment. It could also involve readying yourself more effectively for the process of litigation itself - obtaining prepaid legal services or other advice. And it most definitely involves the ability to get information and set priorities without the "noise" and pressure of an ongoing negotiation.

Other reasons apply more directly to the process of negotiation itself. You may very well find yourself negotiating against an experienced negotiator for a business or a lawyer - preparation is really the only thing that can offset that difference in experience. Or you may be trying to negotiate against a powerful faceless bureaucracy such as the credit card companies or a large corporation. These situations all present special challenges that will make their own demands on you, and preparation is your only way to offset the advantages they have to some extent.

In addition, if you've ever been involved in negotiations, you've probably had a chance to find out that there are lots of things that can change the way they turn out. And things tend to happen very quickly, sometimes. Courage (or recklessness, as the case may be) can make a lot of difference. Just having the nerve to ask for something or to refuse to do something can make a lot of difference, and in debt negotiations nerve can take you a long way. But while having a lot of nerve is a big advantage, it does have some limitations.

The main advantage of courage - and it is a big one - is that you may blunder your way to the point where the other side will let go of as much as they're willing to let go of in order to avoid the costs and risks of litigation. Remember that the other side would much rather not hire a lawyer and take the case to court if possible. You can keep pushing till you reach their bottom line. On the other hand, you may blunder your way past that point, too, where they commit to suing you and make further

negotiations pointless. Without knowing more, how will you know when enough is enough? And how will you know how to take actions that enhance your position and get you even more? And in any event, not everybody, and not even very many people, have enough nerve to test the limits of the other side's willingness to bargain.

There are other advantages besides courage, in other words. We will discuss these things so that you can develop some sense of how far to push, and how to make your position stronger.

Planning

Knowing what you can and want to achieve, and planning your campaign with that in mind, is a crucial advantage of preparation. As we go through various negotiation scenarios, we will discuss what we have observed, in our experience, to be the willingness of creditors and debt collectors to agree to lower amounts, as people often ask us "how much" they should offer or expect. You will quickly see, however, that these numbers have an incredible range – so large, in fact, that knowing it may do little more than give you hope that almost anything is possible. It will be your job, throughout the negotiation, to see just how far the specific person on the other side of the table from *you* will actually go, and of course they'll be trying to keep you from figuring that out.

Anybody who has ever negotiated at all has probably been impressed or even scared by how much the opening position matters. If you offer to settle a debt for 50% of the claimed amount, for example, it is virtually impossible to offer less than that without completely ending the negotiation process – absent some dramatic external event that changes the strength of the parties bargaining position. Winning or preventing a summary judgment, finding a crucial piece of evidence or exposing its absence could do this, but that sort of development is rare outside the litigation context. A good plan, therefore, starts with planning the opening offer: what it will be and how you'll support it.

The second thing that can come as a big surprise in negotiations is just how quickly and how much momentum can develop, and how easy it is to give up more than you expected. Without a plan it is easy to give up large chunks of bargaining real estate without any real advantage in return. If you do not manage your offers from the very beginning, therefore, you can let things slip until it's impossible to get a settlement that you can actually afford. That would be worse than no agreement at all, and so your plan must consider how to manage the process of negotiation.

This chapter will help you understand your own strengths and weaknesses, to develop your strengths and minimize, as far as possible, your weaknesses, and to create a negotiation strategy that capitalizes on the advantages and neutralizes the disadvantages so that you reach a negotiated solution that does you the most possible good.

In later sections we will discuss a number of specific negotiation situations which will allow us to address the specific combinations of factors you will see in particular counterparties.

The Underlying Factors

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As we said above, the factors that go into your initial assessment of your position are what you have, can afford or cannot afford to give, what you might lose in a worst-case scenario, any alternatives you have, what you want, and what your strengths and weaknesses are.

What You Have

You may think that what you have is obvious, and perhaps in some way it is. But when things are hard, and especially when people are harassing you for money or other things or when you are facing other types of pressure, it isn't always easy to keep your priorities straight. For that reason it makes sense to do a sort of inventory. It will ground you in the process, perhaps reminding you that things are not as bad as you might believe, or at least pointing you in the direction you need to go.

While I think that considering some of the intangibles that you have - health, faith, the love of your spouse, etc. - is never bad and will *also* help you ground yourself in the process, this is not intended as a spiritual exercise. Rather, the point here is to get a picture of what you have from a purely positive, material, standpoint.

For most people, an analysis of what they have starts with their wages or salary. If you have not set a budget, that should be the first thing you do. You need to know where your money is going now, and you need to learn to direct it where you want it. Specifically, what you need to know is how much "disposable" income you have. There are various ways of determining what your disposable income is; I would suggest two ways to think of it. The first way is to figure out what your main expenses are: housing, clothes, car, etc. - anything left over from that is disposable.

Since we are targeting your debts, any payments that are *not* associated with a secured asset - your car or house, that is (most likely) could also be considered "disposable." The second way, to give you a sort of reality check, is anything you make that takes you over the poverty level for the size of family you are in: that's what could be garnished, as a general rule, by a debt collector with a judgment. Figure out a tight, but workable budget that you could live with for some period of time - a year or two maybe. Your disposable income will be one way you address your debts over time. For help figuring out your budget and getting a handle on your money all around, check out Mapping your Future.

The fact that you *have* a job is an important asset, as is any money you have in the bank, and any other property you have (an I.R.A., for example). I suggest that, without going into great detail, you make a general list of everything you have that has a cash value that you could get by selling, and that includes household items, art, books, toys, tools - everything. If there is somebody who will give or lend you money to help you get out of trouble, the amount this person would lend or give is an asset (don't get the money, just make the arrangements if you can). We will be discussing "lump-sum" settlements (one payment that would dispose of a debt), and any of these assets could help you come up with a lump sum if it was in your interest to do so.

All of your assets have important qualities. Your money in the bank, for example, is almost completely vulnerable and can often be taken from you with little or no warning if there is anyone with a judgment against you; at the same time, it is your most useful asset in negotiating. Your house and car, on the other hand, almost cannot be reached by an unsecured creditor (i.e., the debt in question is not your mortgage), and an IRA or Social Security benefits can generally not be reached by non-governmental entities at all. Money that might be lent to you is completely untouchable by any creditor until it is in your possession. Your job cannot be *taken* by a creditor, but in some cases your relationship to your job can be damaged. For now, however, ignore these qualities, however important they may be, and simply gather information about what you have.

What you are really doing here is preparing to set priorities, and having your priorities straight is important in negotiation, as well as being helpful in other parts of your life, as I'm sure you know. Many people, especially those who are in debt, have little idea of what they own. You, on the other hand, want to have a very specific and complete awareness of what you have. This knowledge may very well be painful to compile - it can be hard and disappointing to note, in undeniable black and white, how little you have after working as hard as you have in your life - but knowing these things and facing that pain gives you a big advantage.

What You Can, or Cannot, Afford to Give Up

In reality, you can afford to give up all of the things that you listed above, but giving up many of them might seem to make an unacceptable change in your lifestyle. Therefore, establish a sort of hierarchy - a list of the things in the order that giving them up would be difficult or would amount to a sacrifice for you. Of course, if the bills you face are merely a scratch on the surface of your economic well-being, you won't need to go to all this trouble, but if the problems are deeper than that, it will help you to know - going into negotiations - what your options are. If the negotiations *might* take you there, in other words, you should figure this out *before* you get into the negotiations, because by that time you will have too many other pressures to deal with. Knowing these things in advance give you a sort of balance in the negotiations and help keep you focused on the things that will improve your situation.

What You Might Lose in a Worst-Case Scenario

What you might lose is different from what you can afford to lose. As we said above, your assets have different properties. If you are being harassed over a *normal* credit card bill, for example, your worst-case scenario will not normally include losing your home and won't include losing your IRA or Social Security income. It will not normally include losing various household items, either, but it might include losing the cash in your bank account or having your wages garnished. If the bill is your mortgage or condominium payments or fees, on the other hand, losing your home is a very real possibility. You need to know how much of what you own is realistically at risk.

Unfortunately, there is more to consider here as well. That's because not only are your *present* assets at risk, but also certain *future* ones are as well. In a worst-case scenario, matters will go all the way to judgment against you, and such a judgment will last for many years. During that time, any liquid (cash or "saleable") assets that might come into your hands through work or from inheritance (for example) might be intercepted by your creditor if, as is often the case, the creditor is paying attention. Also, that judgment is having a dramatically negative effect on your credit rating, increasing your insurance costs and making it harder and more expensive for you to obtain credit, and possibly work, in any number of ways. It's hard to quantify - and therefore easy to discount in your thoughts - all the future harm, but you must resist this impulse and look at things clearly.

As a general rule, ***you will never want to give up in any negotiations any of the things the creditor cannot reach and take away from you in your worst-case scenario***. In general, you won't

want to let them take things from you that the law doesn't allow, but one of the things you *may* have to consider is whether giving them something they couldn't reach might ultimately be better for you in the long run (considering the future costs we mention above).

To give a simple example, cashing out part of an IRA to pay a creditor *might, sometimes*, make economic sense for you in the long run even though the creditor could never reach it. Making this decision is never going to be easy, and you should not even consider it until you have talked with a bankruptcy lawyer and consulted on the question. If you think the bills you are facing could take you there, however, I strongly suggest that you consider the question *before* beginning negotiations.

Setting your priorities in difficult situations is hard enough when you are quietly sitting at your kitchen table with your family, but every pressure and fear that comes up during negotiations will make it that much more difficult to keep your priorities straight. You want to decide just how far you will go, and under what circumstances, before you begin negotiations.

Consider Your Realistic Alternatives

You have some alternatives. We will mention three of them here, but you will want to consider all of the "outside the box" alternatives that you can think of as you prepare for debt negotiations and settlement.

Sale of Security

If the debt is a "secured" debt (meaning that something acts as collateral that can be sold to pay off the debt if you don't make the payments), the creditor will probably be suggesting that you "surrender" the property (called, "the security") one way or another. Car dealerships are notorious for this, and it sounds like such a reasonable and fair thing to do when they suggest it. Maybe not. While secured debt gives a person the fewest defensive options, just surrendering the property is usually not a good choice. That is because of the way the repossession system works.

If you have a car or other property and see major problems - the sort of problems that could cause you to fall far enough behind in your payments to lose the property, *face the facts*. If you do that soon enough, your best solution becomes possible: you can sell the property. Then there's a decent chance you can do so in a way that actually makes money, especially if you have begun the process soon enough. If the property gets repossessed, on the other hand, whether or not you do it "voluntarily,"

chances are extremely good that you are going to be screwed.

We are not saying that secured loans are "bad," but repossession and foreclosure are remedies primarily designed to solve the problems of the *creditors*, and their problem are not necessarily the same as yours. They want to get the property back, sell it as quickly as possible at whatever price they can easily get, and then chase you for the difference between what you owed and what they got. It is not uncommon, therefore, for a truck that was sold for $15,000, with a note of $10,000 left to be paid and a blue-book value about the same, to be sold for $3,000.

Such a sale, after subtracting the "repossession fee" (which gets charged in most cases *whether or not you bring the vehicle back voluntarily*) and the "cleaning fee") might net less than $1,500, leaving a "deficiency" of $8,500 to be paid by you, when you might have sold it for more than enough to cover the whole amount that was due. Please believe us when we say this is a realistic, and even common, example: a car or truck you are convinced is worth far more than the debt remaining on it is often sold for a small fraction of that debt. The dealer has almost no incentive to sell the vehicle for anywhere near its actual value.

Housing foreclosures work in just the same way, where houses are essentially never sold for more than the mortgage due, and often for much less. If you see this coming, you owe it to yourself to *do the selling yourself* if at all possible, and the sooner you get started, the better the chance you have of working something out that makes a big difference. Houses can take a long time to sell, of course, but vehicles do not. Use Craigslist and be creative, and then take your time making a reasonable deal.

A Second Job

If one of your possible options is a second job, and if you would rather go there than be in your possible worst-case scenario, we would, again, suggest that you face the facts and do it immediately. This might not be such a simple choice, of course, since getting a job can involve commitments, and quitting if it becomes unnecessary is not always without its own costs. Still, if it's a thing you *would* do in order to avoid your worst-case scenario, it makes sense to go there sooner rather than later. It gives you more time to get a better job, with less immediate pressure, and builds certainty into your position. It will strengthen your bargaining position since it will increase your economic standing, and if that bargaining position makes it possible to make a deal that makes the job unnecessary, then you can reconsider your options.

Bankruptcy

Bankruptcy is a third "outside the box" option, in a way, but in this case we do not suggest going there too hastily. There are several reasons for that, but perhaps the most significant of these are that the threat of bankruptcy can be useful in negotiations, and if you must actually declare bankruptcy, it is usually beneficial to have waited longer rather than to have done it sooner. Also, there is rarely any cost for waiting - you're generally better off if you do wait, as a matter of fact. On the other hand, bankruptcy is expensive and highly disruptive in itself. It also stains your credit report for ten years as well. So it's better not to do it at all if you can help it. You can still use the threat to your advantage at all stages of negotiation if you know the specifics of how it would work. That is why we suggest that everyone considering debt settlement should consult a bankruptcy attorney first so that you know those details.

Also, if part of your worst case scenario is actual insolvency - not enough money to keep up with your bills, and debts larger than assets, and unless you can make some of those payments go away through negotiation you're going to lose everything, then we would recommend that you begin taking steps to learn about bankruptcy in a little more detail before attempting the negotiation. Negotiations often involve a "moment of truth," where you must decide whether to give in or go on and walk away. Knowing where that point of walking away is, and what the price of doing so might be, is an important part of your preparations. But remember that the threat of bankruptcy can continue for well after the negotiations have actually broken down, and there's no need to rush into it unless it makes sense to do so.

There are also advantages to planning for bankruptcy if you must, eventually, file for it. If this is at all a likely part of your escape route, it's better to start learning about it earlier rather than later - if you give yourself enough time, for example, you can save more for yourself and pay off some of the people you'd *rather* pay off. But this does take time and preparation.

Other Outside the Box Solutions

We have just mentioned three possible solutions that it would be a good idea to think through if they are possible in your situation. The point here is to remind you to consider all the things that might make things better, from garage sales to taking in a room mate. Knowing what is available before

negotiating should be part of your preparation to negotiate. The knowledge itself will strengthen your bargaining posture as it reassures you about possible outcomes.

What You Want and Need to Achieve through Negotiations

As soon as you have figured out the basic economic facts regarding your situation, you can begin to figure out what you want to achieve through negotiation. As we have said, one of the things you must *also* try to do is figure out the creditor's answers to all the questions you answered above, because you want to know the needs and resources (and if possible the tendencies and policies) of the person negotiating against you. You will do this both before and, to the extent possible, during the negotiations. But for now, consider the goals of the negotiation from your perspective.

Staging the Negotiation

It is very likely that you want the debt you are negotiating to go away entirely without any payment, but this *may* not be the case. It may be that you just want the debt collector or creditor to give you more time (but see Appendix 1 for a case study that should make you think twice about that). You will never actually want a *debt collector* to get any money at all, of course, but you may feel that the creditor - the person who actually provided goods or services to you - should get some money. You may be willing to make sacrifices to get that person the money. Whatever the case may be, write out your best case scenario.

Remember that your best case scenario is not simply for the debt collector to go away without suing or beating you in court. You need to pay as little as possible, get the debt resolved, obtain some credit repair, *and* possibly resolve other issues. Consider what your best case would really be, and what it might take to accomplish. Figure out as many arguments as you can as to why it should happen as you desire. Figure out any facts that might support the position you want to take. Consider what the response will be and plan your responses to those arguments. Remember that you want to hold the number of surprises that come up during negotiations to a minimum. And remember that while you will be negotiating with each creditor or debt collector individually, you will also need to keep a sense of how the negotiations are going collectively.

Know the Status of the Debt and Your Counterparty

If your counterparty is a debt collector, you will want to know how many other debt collectors have previously owned the debt if possible. Looking at your credit report to see how many times the debt has been reported sold would be a place to start for that. The more people who have owned the debt in the past, the weaker the current debt holder's legal case will be. To the extent possible, take actions that would support your favored outcome. (As we pointed out above, all actions which enhance your negotiation posture will support your favored outcome because they will give you the knowledge and "courage" to push the other side to its furthest point of making concessions.) If you are planning to negotiate with someone other than the original creditor, you will want verification of the debt and of the debt buyer's ownership of it.

After figuring out all of this information with regard to your best case scenario, consider your "second best" case scenario. This is not simply one dollar less good than your best case scenario, it is a bargaining position that is different than your best case scenario in principle. That is, your best case scenario might mean that the debt collector should collect nothing and just go away after doing whatever possible to repair your credit, but your second best case might involve you paying only the amount the debt collector paid to buy the debt - or some fraction of the debt - based on something you can argue and mean. In other words, your second best case scenario involves a small but principled step away from your best case.

Now create the arguments for why that is the most you should pay and the debt collector or creditor can and should get no more. Remember that when companies buy debts, they buy the rights of the person who originally owned the debt, so it isn't a valid *legal* argument that the debt collector's damage is only the amount it spent on buying it - but knowing that debt buyers pay very little for the debt is a fact worth remembering as you negotiate.

Next, take another step back and find your third best case scenario.

This stepping back process takes work. Quite a bit of work - but the reason you are doing it *in advance of the negotiations* is that there won't be time to do it *during* the negotiations. There will *time* between offers, of course, but there *won't* be time without tremendous pressure on you to give up or give in. Preparation is key to controlling the flow of the negotiations so that you do not give away money pointlessly. And bear in mind, too, that the results you seek will probably save you many hundreds, or thousands, of dollars. Your "hourly" rate for everything you do to prepare is probably

much higher than for anything else you can do.

Repeat the "principled retreat" from your best case scenarios all the way back to the point at which you decide you would rather "walk away" and negotiate no further. In other words, plan a series of retreats all the way back to the point where you would rather just take your chances than give up another step. And this point should be a product of what you can afford to give up, and what you are willing to give up, as part of your greater strategic plan.

You should decide where this point comes very carefully and seriously - it is really the point where it makes no further sense to retreat, come what may. If you reach that point in negotiations, you must then honor that "line in the sand" and stop negotiations that would go beyond it. There will be pressures to collapse and go beyond the line, but this is the point where you either simply cannot honor a deal that you make, or where the result of the deal is worse than what the debt collector could do to you if there is no settlement and it just sues you. Thus you know it would never make sense for you to go beyond the line however tempted you may be. Know where this line is both for every individual debt and for all your debts collectively.

Depending on how bad your situation is, this line in the sand could come closer or further away from paying the whole debt, but in a sense it doesn't matter where it comes - for you it is the point of no return. *We are not saying that you should plan to give the debt collectors the most you are able to give*. You should certainly not do that if you can help it, but knowing where the bargaining stops helping you is something you need to know before you even start negotiating.

What Your Strengths Are

You should know what your strengths are as you approach the negotiations. You will want to share, or hint at, these strengths as you negotiate. So what might be some strengths? A strength could be:

- a solid claim that you do not owe any money, or the amount claimed, for any reason;
- any legal or practical weakness of the creditor or debt collector https://yourlegallegup.com/pages/you_can_beat_debt_collector;
- any money you have that is beyond the knowledge or reach of the debt collectors (e.g., a family member's offer to help, a 401k, or protected benefits);

- a willingness to declare bankruptcy and the ability to do so;
- the resources to fight the debt in court;
- social pressure you could bring against the original creditor;
- anything else you can do to weaken or delay the claim for money.

With the exception of money you have that is beyond the knowledge of the debt collectors (which you never want to tip to the other side before you have an actual, written agreement in place that you can pay), you may want to share these strengths with the other side. We will discuss how you might do so in later sections of this book. If you are negotiating with a debt buyer, chances are good that one of your strengths is their likely inability to prove everything they would need to prove in court. You can challenge them on this without worrying that you are "tipping your hand" in case the matter eventually ends up in litigation. If they cannot get it - cost effectively - then they cannot get it.

If you are negotiating with a debt buyer and have any legitimate attack on the basic, underlying debt, you would probably be able to win a lawsuit against the debt buyer, and if it is a consumer debt, you could probably bring suit against the debt collector, which allows you to control the timing of things for your own advantage, including the filing of a lawsuit against a debt buyer you think may be an easy target.

You can probably win because a debt buyer buys the weaknesses of any claim (along with the debt), but will probably not have access to witnesses who would testify as to the debt or the quality of the product or service if you are challenging that. You, on the other hand, could testify as to your own experience, so you'll have a big advantage. In the case of consumer debts, at least, you can sue any holder of the debt to cancel it based on an attack of the underlying debt's legitimacy, and in most cases involving installment plans, you can sue any holder of the note for damages arising out of your original transaction. That is, they buy the liability as well as the debt.

Just because you *could* or *should* win does not necessarily mean you should not agree to pay anything. All litigation has risks, of course, but in addition to that you also want to protect and restore your credit report. Paying something to do that is not necessarily a bad idea - but you should still be prepared to hammer away on their claim as a way to increase their willingness to give you what you want. No collector will admit that your debt isn't legitimate and valid, but that isn't to say they won't drop it if you start applying pressure.

What Your Weaknesses Are

In addition to knowing your strengths, you also want to know your weaknesses. One reason for inventorying them before beginning any negotiations is that you want to be able to evaluate them fairly and accurately and to prepare your responses ahead of time. If one of your weaknesses is a fear of going to court, for example, you should figure out exactly what that means to you. Are you afraid of the judge? Afraid of what the law could do? of going to jail (not a legitimate threat) or being embarrassed? What exactly does fear of "going to court" mean to you? A more "material" weakness of yours might be the fact that you would be against a corporation with many more resources than you have - although this may not be as significant a disadvantage as you may think. If you are worried about being able to spend time in court and you have vacation days you could save, then, obviously, you should start saving them.

People draw some funny lines sometimes - it is important to believe that you can actually make an important improvement in your life by getting your debt under control. That can be hard to do sometimes when things haven't been working out for a while, but you need to have faith - and this means not insisting that you have to save vacation days to take a trip with your family when you could make a much bigger contribution to your family's welfare by clearing up your debt. While that debt is hanging over your head you're never really all there for your family, and sacrificing your and your family's long-term financial health for a week in the sun is... a mistake. We bring it up because we have seen people make this mistake before all too often

Whatever the weakness of your bargaining position, though, it is best to know it before going into negotiations so that the fear does not become magnified in your mind during the negotiations, as fears often do. With preparation you can look at the weaknesses fairly so that they take only their proper weight in the negotiations, whereas without the preparation it can be virtually impossible to do this because your counterparty will sense the weakness.

The other reason for knowing your weaknesses is that it will give you a chance to strengthen them - or plan a strategy of bluffing the other side around them. If your fear is based in some way upon a fear of not being prepared or knowing what you are doing as you defend yourself, you can solve that through the materials at Your Legal Leg Up. If your fear is more "psychological," you can begin to take control of it, either by going to court and watching the proceedings, or by systematically practicing your negotiations in day-to-day life, if that is your fear. Do you know there are some people who

negotiate pretty much *every* transaction in their day to day life just for the heck of it? They get good at it and rarely pay as much for anything as other people do, and they enjoy the process more than you might imagine. It becomes a game after a while.

In any case, whatever your weakness may be, you can, with time, strengthen your position and neutralize it.

You can find a sample plan in Appendix 5.

Chapter Five: "Posture" in Negotiations

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Have you ever noticed how certain people just act like they think they're something special? They walk into a room, say certain things, act certain ways, and everybody around them starts treating them with total respect? And you look at them carefully, sometimes, and think, "why? Why would anybody be so impressed?" because in reality they're just plain, ordinary people with a little glamor or extra nerve? Look at most politicians - very ordinary people for the most part, but yet people follow them. Why?

In negotiations, we call it "posture." It's the group of mostly unspoken messages that a person sends through body language, clothes, equipment, actions and expectations - even paperwork or forms, when it comes to collectors. People pick up those messages and, in an amazingly large percentage of the time, believe what the people around them are "saying" about themselves.

Posture works both ways, though: it can work *for* you if you do the right things to make it work for you; and *against* you if you let it do that. You need to harness that power and put it to work for you. Negotiations are, ultimately, engaged in by people. With all the uncertainties and risks, negotiations are conducted - on both sides of the table - by individual human people trying to figure out the right thing to do to get the best results. For better or worse, most of them, even company employees, debt collectors, and lawyers, will take their lead on how to treat you... from you.

Back in the 1970s, Robert Ringer wrote an excellent book on negotiations called ***Winning through Intimidation***, and the book was later rewritten and called ***To Be or Not to Be Intimidated***. In that book, Ringer talked about many of the ways negotiators cause each other to be more helpful, from the "packaging" of offers to the type of stationary used in communications. Most of those things were designed to increase a negotiator's posture, and most of them, unfortunately are simply not available in debt negotiations. Two related techniques that *are* available, however, are "**staying power**" - the real or apparent willingness to walk away from the negotiations, and the **use of time**. These will be very important to you. We will discuss other negotiation techniques that might be used when speaking to a specific individual in later chapters when we are discussing negotiations with specific types of creditors or collectors.

Staying Power

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Staying power is the ability to survive without the negotiations resulting in an agreement and is the ultimate posture-enhancer. If you have the ability to outlast the other person either in negotiations or otherwise, you have a major advantage. Part of realizing your own staying power, for you, is simply understanding that, in debt negotiations, the negotiations take place in three stages: pre-litigation, litigation, and post-litigation. That is, they can call and write you letters bugging you all they want (pre-litigation), but if they ever want to *force* you to pay, they're going to have to sue you (litigation), win, and then try to collect from you on the judgment (post-litigation). The company charging off the debt and bringing suit, while it does create some damage at least temporarily, does not end the negotiations.

Each of these stages has its own characteristics and opportunities, but if you simply realize that every negotiation has these stages, it should change your perspective of the way time affects you and make you less anxious. That in itself will dramatically improve your posture and allow you to make better use of the time involved in negotiations.

It is human nature and very obvious that the more a person wants something, the more he or she will give up or pay in order to get it. This is true of pretty much everything, and you must remember that it also definitely applies to something as indefinite as "a negotiated settlement." Or to put it slightly differently, the more you would rather settle the debt, the more money you will give the other side to get it to settle with you. Staying power is the ability to "be okay" with no agreement being reached. Having that power is very important; making the other side know or think you have staying power is even more important.

Ironically, the less you seem to need to settle, and the more willing you are to walk away from the negotiations, the stronger your position - you won't settle from fear, and so you force the other side to consider the possible consequences of any action it takes and let *it* be afraid. There were some interesting studies done of negotiating dynamics. The researchers set up the experiment so that two people believed they would be able to get some money - all they had to do was find a way to agree on how to divide it. The question was, how would they negotiate this question?

You might think that a 50/50 split would suggest itself, right? But on the other hand, since it was "free" money, anything more than zero would also make sense for a person to accept, because even though it might be annoying to let the other guy get more, if you got anything for free that would be

better than nothing. This was a perfect opportunity to understand staying power. Those who were willing to walk away and lose everything if they did not get their way, however unreasonable the position they took, and who willing to insist on a larger percentage did get more - often almost all of the money in the experiment.

It is important to develop as much staying power as possible so that the other side cannot bully you around, and to show that power so that you can use the power to your benefit. Make your position as strong as possible in reality, and don't show fear to other side in any negotiations. We spend a lot of time on these issues because your attitude makes a large difference in the way things will go.

Four Ways to Build Your Staying Power

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As strong as the simple *willingness* to walk away may be, the ability to "walk away" *unharmed* from any deal is probably the strongest negotiation factor there is. How do you *get* that in a debt negotiation, though? There are four - or maybe five - ways to get the "walk away" advantage in a negotiation. You can be *strong* enough, *rich* enough; *poor* enough; or you can have *insurance*. The fifth way is definitely a double-edged sword: you can be *desperate* enough. You will see that the insurance option is incomplete, however, and this brings up a practical balancing test for risk.

Strong Enough

You probably know what strong enough is - it's the feeling you have when you know the debt wasn't yours in the first place, that you paid it off, or that for some other reason all the justice is on your side, *and* that you can prove it. As unpredictable as the law can be, this situation does happen sometimes - you just find yourself with all the cards in your hands. But just because you're confident doesn't mean you don't need to deal with it - even wrong information can hurt you sometimes, so you will need to address the situation. But sometimes you're confident, and if push comes to shove, you know that you have the resources and proof to show that you're right.

Rich Enough

You're *rich* enough if you can face what you reasonably expect to come next - win or lose - without harm. That is, you can either honor all obligations as they previously existed without sacrifice (i.e., you didn't need to negotiate in the first place) or you can accept the consequences of not honoring

the obligations without sacrifice. As unlikely as it may seem at first blush, this is not that unusual a situation. Many people who feel they got scammed by somebody or some company simply stop paying the bills, but then, if called by a debt collector, try to negotiate to make the company go away. If the negotiations break down, they walk away, more or less confident they can handle whatever comes next. If you cannot walk away with that confidence, you're not rich enough.

Poor Enough

You're *poor* enough if you can walk away from negotiations without being put into a worse position than you already were before the negotiations began. In other words, if the negotiations break down and the company pursues you either through litigation or credit reports and tries to hurt you, you're "poor enough" if they cannot collect from you even if they win a judgment. In that case you're "judgment proof" and either don't make or have enough for them to be able to garnish your wages or property, or you're on Social Security or some other benefit they cannot reach. Remember, though, that judgments last a very long time – as a practical matter you may consider it the rest of your life in most cases.

To be poor enough you must *also* be immune to any further damage to your credit report – it's already so bad that nothing they do can hurt it. If you have already carefully considered bankruptcy and have decided to *and you are able to* file for bankruptcy at any time you choose, you might be considered poor enough, too. As we will discuss further below, this gives you the option to keep your counterparty from getting anything - unless the debt is secured, so it is just like the experiment, where refusing to make an agreement kept both people from getting the money promised by the researchers.

Many people think they are poor enough without *actually* being poor enough. They are, instead, desperate. If you don't *know* exactly where you stand but just *think* it's too bad to get any worse, you're just desperate.

Desperate

We probably don't need to tell you what desperation is. For purposes of this discussion, though, it means you lack enough hope or faith to take the risk or opportunity of the situation seriously, and you simply take a position ("I can't afford *that,* whatever they can do to me if I don't … ," or "they'll just have to…" or some similar position). Unfortunately, this is quite common in people with debt problems. There is negotiating power in being either rich enough or poor enough, but desperation,

while it may give you a certain rash willingness to walk away, is a two-edged sword if it keeps you from correctly understanding your bargaining position or taking action to improve it.

For example, there are lawyers who send letters to people being sued by debt collectors offering to represent them for *free* (in the hopes of also suing the debt collector under the Fair Debt Collection Practices Act or for other reasons). The response rate, to an offer of free help and even the chance to get the debt collector to pay them some money, is less than 2%. If you get such a letter, you should certainly follow up on it! But the fact that so many people do not do so suggests a profound lack of faith and hope. The vast majority of people who get these letters ignore them - and they are leaving golden opportunities untried. They could take a mighty step to improve their lives, but they don't. They don't even look at the letters.

It's a legitimate position, you might say – or at least, in today's economy it's easy to see how people can get there. If you are desperate, however, *you must not give in* to any tendency to underestimate the harm or benefit your actions can have. Concentrate on taking the actions with the greatest long-term benefits and the least long-term harm that you can. In other words, act as if things will improve and that your actions will eventually make a difference. There are no free lunches even for the desperate – you will eventually pay for everything you get one way or another. If something good comes up, seize the chance. It is normal for opportunities to come up - they pretty much always will.

Even if you are desperate, negotiation can bring you great benefits, but you must make sure not ever to *over-commit* to anything in a settlement. You must find a way to stay realistic - you can't afford to be whipsawed between hope and despair, where you allow bills to get out of control and then agree to anything in the desperate hope that things will get better. If you agree to pay $5,000 on a $15,000 debt, but then you can't pay it, it will often negate the entire agreement, meaning that all your sacrifices to get the deal and make whatever payments you did make will have been for nothing. You can't let that happen, and desperation, because it tends to make you stop paying attention to important details or choices, often leads to just such a result.

"Insurance"

Remember that negotiations taking place without litigation are just "pre-litigation" negotiations. You know that if you don't make a deal with the creditor or debt collector you will eventually probably

be sued. The thought may scare you - and it may intimidate you into making a less beneficial deal than you could make. If the thought of being sued does intimidate you, and if you are not comfortable representing yourself using the materials available through Your Legal Leg Up, you may want to consider a form of "insurance": prepaid legal services.

You can purchase a prepaid legal plan, and if you get sued, the provider will find and pay for representation for you. This does not completely eliminate the risk of litigation, but it reduces it significantly – most companies will not pursue a fully represented person for most debts, and if they do, a lawyer can often get the debts eliminated. Click here for information about this type of insurance. Be advised that the service is not provided by Your Legal Leg Up (YLLU), but was negotiated for you by YLLU, and YLLU may be compensated for the referral.

Unfortunately, this is not a perfect solution, as you can only insure against risk that the other side will resort to litigation rather than against the risk that you would lose the case. Even if it does not entirely eliminate the risk of losing, it reduces it, and it *eliminates* the risk that you will have to hire a lawyer or do without one. Yet it leaves the risk of harm to your credit report and your future still there, and this will need to be addressed through negotiation or successful litigation.

Bluffing

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Good negotiating posture makes bluffing - suggesting that you have the power or intention to take some action when you don't - possible. We suggest that you consider bluffing as to your intentions to take certain actions, but that you not bluff as regards your power to do them. In other words, you should at least be *able* to do anything you threaten to do whether or not you actually intend to do it.

We have spoken of risk and risk management as if they were a sort of absolute factor in negotiations. They *will* have an objective effect on you, given a certain outcome. If you are rich enough, in other words, you are simply rich enough not to have to worry. But the effect on the *negotiations*, on the other hand, is a matter of perception – of having the other side know or at least believe that you are beyond their power to harm. That is, it will definitely help you to be rich enough to stand any result, but it will *change the way the other side negotiates* with you if it thinks you can walk away from the negotiations without being hurt, whether that is true or not.

This is subtle, though – you want them to know what you can do without becoming so offended or annoyed that they ignore their economic best interests in the way they negotiate. In our experience,

when negotiating for yourself, it is better to let your actions speak louder than your words as regarding your ability to walk away. You simply build more time into your responses and are less eager to accommodate, and you make comments in passing that you might file for bankruptcy or are about to hire a lawyer… or whatever seems right, but you keep these comments light unless you are asked about them. When you are asked, however, you will need to make the threat (real or bluff) believable. This is one place where all that preparation we had you do becomes so important. You will know very well how to make the threat believable.

When negotiating for someone *else*, however, you can be more obvious and aggressive. You can say that they are in a position not to be affected by the negotiations will work: "Mr. Smith (my client, friend, relative or whatever) actually does not need to negotiate with you – there's nothing you can do to him because he is considering bankruptcy and will just do it if you sue him and get a judgment – but he wants to save you both some trouble…" It isn't always a bad idea to say this so bluntly on your own behalf, either. Being aggressive in negotiations is not always a bad idea.

You must always be ready for the other side to "call" your bluff. If your bluff was smooth enough and conditional enough (he "could" or "might"), and if it was based on your actual power to follow through on the threat if you want to, then you can take whatever action seems in your best interest without losing your "credibility" - your believability. You want them to *feel* threatened if you make a threat, and for that to remain the case over time you have to do what you say you're going to do.

Unless your negotiating posture is that of someone who is simply irrational and unpredictable. People do try to avoid completely arbitrary people sometimes, but in general we do not suggest you use this style - you won't be able to get people actually to cooperate with you.

Use of Time

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The use of time in negotiations is something that most people do not understand. Inexperienced negotiators often seem either to fear that there is *no* time, or to fall into the trap of believing that time does not matter at all. Actually, however, if you are in the pre-litigation stage you obviously have plenty of time before they would be able to force you to pay. You will want to use that time to your advantage by allowing the right amount of time to pass (between offers, for example) but not letting that passage of time damage your position (by not doing things you should be doing to strengthen your bargaining position). Using time correctly will significantly improve your negotiating

posture

Consider the game called "chicken." In one form of it, two people (usually teenagers) race straight toward each other so that if they collide they will both likely die. In theory, one will "chicken out" and veer away from the collision at the last minute. All too often, neither one does. The debt collection process is a lot like that, first in pre-litigation negotiations, where the "collision" would be filing suit and involving lawyers. The second game of chicken occurs in litigation itself, where the fatal collision would be trial.

Both debtors and collectors would generally prefer to avoid trial, which is extremely expensive and risky, but the question is whether or not they will "chicken out." One difference to remember, though, is that this comparison is not perfect - going to trial is often an expensive option, but it is rarely a fatal one for them. It could kill the debt if you win, and it will almost certainly kill the profitability of the debt if you fight them all the way, but you will still probably have more at stake in terms of your future. Still, they would still much rather not go to trial if possible, and one of the ways you want to use time is to make them worry about that.

Remember that there are at least *two* games of chicken being played, and really three of them. There are negative consequences for going to the point where the collector files suit, as you will then have to take action to defend yourself. But the real risk comes in the second game after the lawsuit is filed, as you "race" towards trial. And this risk is something you can understand, prepare for, and quantify - and often defeat entirely if you are determined, which is another reason it makes sense to prepare yourself for litigation one way or another.

If you can handle the risk of them filing suit, in other words, you can take more time to negotiate, push the number further down, and push for a better outcome for your credit score, than if you are vulnerable to litigation. Does that make sense? The more they need you (to agree to pay them if they're going to get paid at all), the more they will give up in negotiation to *get* you to agree to pay them. So the litigation insurance makes sense even if you intend to negotiate and feel that you need to come to a settlement.

As we said, there is also a third game of chicken possible: negotiations that could take place even *after* the debt collector gets a judgment. Of course, if they have a judgment against you, the debt collectors are going to want more from you as a general rule - your situation has become potentially far more vulnerable, while they have eliminated the legal risk from your case. Still, if bankruptcy is a real

option for you, or if all your assets are unreachable by the debt collectors, you could still negotiate as if there were no judgment. If they just haven't found your assets but could reach them if they did, you could still negotiate a significant deal - chances are you could get at least a 30% discount from a debt collector - and some credit repair - if you offered actual cash.

In the next chapter we start to look more specifically at different kinds of debt collectors and types of negotiations.

Chapter 6
General Definitions and Counter-party Status When Negotiating Debt

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With this chapter we begin to look more specifically at negotiating in debt situations. While you must keep the principles we discussed above in mind, how you will actually negotiate will depend largely upon the character and legal status of the other side, your "counterparty," and by extension, of the debt. We start with some important definitions, as these relate to the formal legal status of your counterparty, and then we discuss how they will or might affect your negotiations.

Definitions

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As we have already mentioned, we refer to the entity – actual or legal person – that transacted with you in the beginning as the "***original creditor***." This is to distinguish between entities that actually participated in the creation of the debt or took it over very soon afterwards on the one hand, and on the other hand, companies that either help the original creditor in collection later or simply buy the debt from the original creditor and become a new creditor. It always helps to *know*, if you can, exactly where you are in the collection process. The further down the food chain your counterparty is, the weaker the legal case against you is likely to be. However, that means that more damage to your credit report by *others* in the collection process is likely to have already occurred.

Not Always Clear

It isn't always clear even from the beginning whether an entity is an original creditor or not. In purchasing a car, for example, you will often sign up for payments, and this form may be forwarded automatically and without your knowledge to another company that "services" the debt or simply takes it over. This is also common in student loans and real estate, too. For our purposes in discussing *negotiation*, all these entities will be considered original creditors because they were brought into the transaction before the bills became overdue and as part of the original transaction. They may, or may

not, consider themselves part of that transaction for other purposes (amazing how they scatter and deny if you bring a suit you bring for fraud, for example).

What we will call an "***actual debt collector***" is an entity that is acting to some extent as an *agent of the original creditor* in collecting a debt. That is, they're collecting on behalf of the original creditor. We will distinguish between actual debt collectors and debt buyers, in other words, because the debt collectors are really just doing the work for the creditor, whereas debt *buyers* really work for themselves and do not have to answer in any way to the original creditor.

We do not spend much time on actual debt collectors because they have very limited authority to negotiate. If you are looking for a substantial reduction in what you owe, actual collectors may be more of an obstacle than anything else, although no doubt there are exceptions to that rule.

The ***debt buyers*** (also sometimes called "junk debt buyers") purchase the debt from the original creditors (or other debt buyers) and own it for themselves. Although debt buyers are considered "debt collectors" for some purposes (i.e., under the FDCPA), we will discuss them *here* as being different from actual debt collectors. They have almost all the same options as the original creditors, do not in any way answer to the original creditors, and act independently of (and cumulatively – whatever they do is separate and in addition to) the original creditors. We will discuss them in much greater depth below as well.

People working for the debt buyers are all "debt collectors" for the purposes of the FDCPA, but for our purposes we will call these annoying people "debt buyers" because they are in a separate chain of command leading to a new decision-maker - someone in the debt buying company. In other words, we will largely discuss two groups - original creditors (and actual debt collectors) and debt buyers (and whoever is working for them).

As far as possible, you will want to know the exact legal status of anybody talking to you - and make written notes of this. If in doubt, ***ask*** and then *think* about the answer they give you carefully. Debt collectors and debt buyers are required by the FDCPA to identify themselves and their role in the collection process - when the debt involves a consumer debt. If an original creditor pretends to be a third-party debt collector of a consumer debt, the FDCPA will apply to him, also, but the fact of a legal obligation does not always mean they'll tell you the truth, of course - you must keep your eyes open.

Negotiating Authority

The reason we distinguish between the parties in the way we do, versus the way the Fair Debt Collection Practices Act, for example, does, is that we are interested in **negotiating authority**. That is,

we are interested in the power of the person you're talking to, to change the terms of the deal - or more specifically, your obligations under any deal. Actual debt collectors, because they work on behalf of someone else, do not generally have that power.

Negotiating Strategies

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When it comes to negotiating and settling your debt, you will need to use different tactics depending on which of these three types of entities you are negotiating with. We will start with your negotiations with the original creditor, as these would logically occur before the debt landed in the hands of a debt collector.[1] Then we will discuss negotiations with actual debt collectors, and finally with a debt buyer. You can often find out if the original creditor still owns your debt simply by calling up the original creditor and offering to discuss the bill. If the debt is still in the hands of the original creditor, they'll talk to you. If not, they typically won't – but you should still ask just to be sure: "Do you still own and control this debt?" As you will see, we think you need to be much more careful about ownership of the debt if and when you negotiate with debt collectors or debt buyers.

Understanding the *Legal* Status of the Companies

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In consumer debt *litigation* (lawsuits over debts owed by people for things they bought for personal use or consumption), the main distinction is between **creditors** (original creditors - the company you initially transacted with) and "**debt collectors**" (almost everybody else). That is because the term "debt collector" is defined by the Fair Debt Collection Practices Act (FDCPA) pretty generally as any party collecting or attempting to collect a *consumer* debt *originally owed to someone else*.

This definition of debt collector puts actual debt collectors together with junk debt buyers. It therefore does set up certain different *rules* by which the players play when collecting consumer debts, but for *negotiation* purposes, the original creditor will retain the ultimate authority over the debt when an actual debt collector is attempting to collect the debt. Remember also that the FDCPA does not apply

1 Naturally, the original creditor holds the debt before a debt collector does, but even where the debt is eventually sold to a junk debt buyer it doesn't necessarily mean that you'll never hear from the original creditor again. Actual debt collectors for hire will *usually* give the debt back to the debt collector if it remains uncollected (because they never own it, it remains in the possession of the original creditor), and debts that are sold to junk debt buyers *sometimes* revert or go back to the original creditor. In that situation, the original creditor would at a minimum have many of the same problems that debt collectors typically do with evidence and records.

to debts that are not "consumer debts" - debts incurred for things that are primarily for household or personal, rather than income-producing, use.

Original Creditors

Original creditors, as we said, are the entities (legal “persons”) who supposedly transacted with you in the first place. This transaction could be a sale, but it could also be other things – like rent or condominium fees or utility bills, parking tickets, business fines, or a debt caused by a law suit. In fact it could be any debt whatsoever. We are simply talking about ownership and negotiating power.

As a general matter, original creditors usually have the documents and other evidence they need to prove their case if it goes to court. As part of the original transaction, they should have or know how to find any documents or people necessary for trial. So - again as a general matter but not necessarily as a foregone conclusion - the original creditors have a much stronger legal case than people down the food chain. Some exceptions to this rule we have noticed are Citibank, Discover, and large credit card companies - these original creditors have sometimes seemed to have trouble coming up with the documents they needed for their cases. In any event you will still always want to probe for possible problems in this regard with any creditor, both during negotiations and in litigation.

Although access to records and people is not usually a problem for original creditors, they do have a couple of things that favor you in a dispute. First, other than used car dealerships, original creditors are generally either not designed for litigation or are heavily regulated, or both. These things interfere with their ability to sue you, as doing so is either a distraction and expense for them that does not really promote their chosen business or - in the case of real estate rental or utilities, among others, there may be a number of regulations that significantly control what they can do and when they can do it. If your original creditor has any of these restraints, you want to know, as it will affect the way they negotiate with you.

The other thing is that the original creditor must generally be concerned about public image. It is rare, but not unheard of, for people to mount serious boycott campaigns against companies that take aggressive action against people in a community. So that is a risk. On a much more widespread basis, no doubt, is simply negative publicity that drives away a customer or two at a time. It does not take many of these to negate the value of a lawsuit, so every original creditor with this concern must look twice as carefully at a potential lawsuit. While it might not stop a company from filing suit to get what

it requires, this concern definitely weighs among the factors considered in determining how much, if anything, will be required to settle the matter. If you are aware of this issue in negotiations, you may be able to turn it to your advantage.

Collector Behavior

When a company is collecting its own debts as an original creditor, its behavior is only very loosely regulated or controlled by law. A person acting on behalf of an original creditor (as an employee) comes under very few rules, and most courts have not been concerned about a little verbal abuse, bad publicity (such as posting a bounced check at a store or publicizing the names of people who didn't pay off some bank fees - to other banks, to give two examples). In general, the law regards original creditors as sufficiently limited by the marketplace: really obnoxious companies will go out of business, as they should. This has meant that no laws were really necessary to prevent abuses. - the market takes care of it, by and large. There are *some* limits, however, as the behavior becomes overly coercive or threatening, physically harmful, or so far beyond the bounds of decency that it is considered "outrageous."

Defenses to the Debt

If there is any *defense* to the existence, correctness or legitimacy of the debt – e.g., it was obtained by fraud or mistake, or not at all – this defense will apply to the original creditor (as well as, generally, to any debt collector or debt buyer). Any such defense would obviously be important in negotiations with the original creditor, and you should make it immediately and repeatedly throughout your negotiations with it. You should know, also, that when the debt being collected is a consumer debt, at least, any defense you might have against the original party will also apply automatically against anybody trying to collect on the debt (The “FTC Rule”). And this is true of most other debts as well - although not always in real estate transactions (look at the mortgage agreement).

The more it looks like you can and will pursue any remedy you may have against the other side, the more likely it is that the other side will negotiate with you. This is obvious, probably, but what it means is that *you should begin preparing to prove what you are saying as part of your negotiation preparation and plans*.

Having that **proof** is crucial. If your claim is that you did not sign a document, then consider how you would actually prove it. If it's a question of fraudulent things they said about a product, you will also want to go about getting the proof of that claim. Negotiations are *never* a complete substitute for investigation or research. Inexperienced negotiators often make the mistake of believing that negotiations will make proof unnecessary, and so they weaken their position with inactivity. Instead, use your investigation to strengthen your negotiations.

Make the Call

It is a good idea for you to initiate the settlement call with an original creditor. Doing this shows good faith, initiative and responsibility. If it is a legitimate debt that is not too old, call the creditor, take the bull by the horns, and make your offer, explaining why you need whatever accommodation you need. *Write out the things you want to say* before *making the call and make notes of whatever the creditor says to you*.

Remember to ask for credit repair in this call - getting it from the original creditor is the best place to get it.

If there is anything about the debt that isn't right, on the other hand, or if the debt is old enough to make you think the creditor might have trouble proving it, you are going to want to be a little cagier. Don't admit the debt is yours, but simply put any offer you make in terms of trying to "resolve" the debt to everybody's satisfaction under the circumstances. Again, take notes and make sure you make credit repair a condition of your offer. Remember that even if they have everything they need to prove the debt it would still take them years to collect it, if they could ever collect it at all, if you dispute the debt and try to avoid paying. Your agreement to pay makes a lot of difference to any creditor at any time, and your payment, of course, means much more than that.

Use your negotiations to strengthen your investigations as well if there is anything odd about the debt. To do that, you ask for information from the other side as you negotiate. That is legitimate: if you are negotiating, you want to know that the other side is the right party to receive any money you may be spending, and you want to know whether their claim to that money is good enough to force you to pay. So ask them the questions that will help you evaluate those, and other, factual issues. Since they want you to give them money, they will likely cooperate with you to a considerable extent.

Just be very careful about the information you give them in return.

Original creditors (other than credit card companies) usually have their eyes on the bill itself and what they paid for whatever product or service they supplied – perhaps other business necessities as well. When you are negotiating with them, therefore, percentages will have less impact or meaning. A suggestion that you pay "25%" of the debt is not likely to sound good to them – they're too close to the original transaction itself to think of the debt that way, and the person you'll be talking to will probably not be paid according to how much of the debt is collected. In fact, the person may be the owner of the business and may actually take things personally, although this is not necessarily negative for you.

For these people, your negotiations are primarily going to be in plain dollars and cents, and your arguments will be either to the original transaction or the quality of the materials or services (or anything else you would complain about if you were disputing a bill), because you are basically asking them to "knock" something off the bill. If there's a reason based on the underlying transaction, this is a good time to put it out there. Even if the reason you don't want to pay is that you just don't have the money, an original creditor will want to hear more about circumstances related to the transaction in question than anyone else will (except this is not true of credit card companies, who function very much the same way as debt collectors).

We are not suggesting that you make up false complaints or wild claims, although there are times this could be effective. Doing that would be close to extortion (blackmail) and could easily motivate the other side to go to great lengths not to negotiate with you. It's one thing to negotiate with someone who cannot pay for some reason, even if it isn't a good reason, but it's an entirely different thing to cave in to a scam artist. If the other side feels that way about you, it isn't going to be good for the negotiations most of the time! And of course it's very dubious morally and even risky legally.

A Word about Collection Calls from Credit Cards

The credit card banks have heard it all, and their collectors will listen to everything you say - with everything going in one ear and out the other. There is no point in saying anything to them unless it is tied to a specific request, and then you are really only trying to move up the chain of command. Saying "actually, I'd like to talk to someone about settling this debt for less than the amount you say I owe, can you tell me who I should talk to" will get you much farther along than any excuse you might tell the person calling you to collect. Then you really must take your search for the right person seriously and not keep talking to the first collector. Whether they tell you they'll "get the message to the

right person" or not, you have to find the right person, and any time you spend with the collection caller is wasted time.

Actual Debt Collectors

Actual debt collectors (as we use the term) are agents for, but not employees of, the original creditors. That is, the people calling you are usually either nobody's employees or, much more often, employed by a collection agency that works under contract for the original creditor. Companies hire debt collectors for two main reasons - to avoid doing it themselves (since it is a distraction and annoyance and would require someone in the company to face an unpleasant task or would require hiring more people for the company), and to insulate themselves from the behavior of the collectors.

In either case, the person calling you will be at least minimally trained in debt collection and will not see the collection process as a nuisance or distraction - will very likely take pleasure in annoying or harassing you, although many of them are probably just people doing a job. Anyway, they're used to being unwelcome callers, and they're used to pushing the people they call around.

They are *not* used to people who have their own plans. You will be something out of the ordinary for them.

Actual debt collectors are paid in various ways. Sometimes they are simply paid an hourly rate; sometimes on a pure commission basis; and most often they're paid on some sort of mix of hourly and bonus or commission. In any event, they will look at you - and your debt - as a matter simply of dollars and cents. They won't be surprised or offended that you want to negotiate about the amount or terms of the debt, and they will have *some* authority to change things for you.

Because the debt collector is not an employee of the original creditor, it will not have the same concerns with public image as someone working for the creditor would have. The debt collector's only real concern will be with the bottom line, and their only "customer" is the business that hired them (not you), so there will be very little general market pressure on it to behave decently or honestly. That means you cannot expect them to act decently or honestly, therefore, so you must get any agreement of any sort in writing before you do anything. Debt collectors are notorious for some of the things they do.

At the same time, the actual debt collector's authority will be extremely limited - the original creditor will have given them some sort of specific limits to what they can do if you try to negotiate. This limit may, or may not include credit repair, but you should not make a deal with an actual collector if you cannot get credit repair.

Getting an actual collector to listen to your argument that you were ripped off or should only pay fifteen cents on the dollar is probably so rare that it is hardly worth considering, and yet it is possible - there are times when even an actual debt collector can simply scrap the debt. Therefore, you should try it if it's part of your strategy. Even if you get no sympathy from the collector, consistently making your objections known is still a good idea, as the words you say to a debt collector are either recorded and saved, or put into notes that accompany the debt.

If you make a strong argument to a debt collector today, the business owner or someone down the line will eventually hear the argument and may extinguish the debt at that time. In a debt buyer litigation context, your having made objections to the debt early in the process will almost guarantee your victory later if you get sued by debt buyer. When you are talking to the debt collector, however, you cannot know what will happen. Thus you should simply consider the person calling you as having extremely limited authority. Make your point if you have one, and make your offer if the person says he or she can listen to it, but keep any factual discussion to a strict minimum until you have someone with authority. That means your telephone conversation may go like this:

You: "Hello."

DC: "Hello, is this Joe Consumer?"

You: "Yes. Who is calling?"

DC: "This is DC... [often the call will start with an automated dialer asking you to hold for an operator and informing you that the call might be recorded. At some point the debt collector will, or should, identify himself and start trying to get you to agree to pay a certain debt. This is where you should take over...]

You: "What did you say your name was? How do you spell that?"

DC: "Debt Collector."

You: "And where are you located, physically?"

DC: "I'm calling from Philadelphia."

You: "And are you with an agency or company? what is that?"

DC: [Answers.]

You: Do you know that the company you are trying to collect this debt for commits fraud in its sales presentation?

[take it from there - but remember to plan what you want to say before the call, make notes during the call, and not admit owing anything. "I'm not admitting I signed anything, but do you know the sales representative tells people the car comes with free gas for three years?" When the debt collector asks for details, you should ask what

negotiating authority he or she has - turn the conversation back to the collector and do not give any further detail because you are the only one who can make damaging admissions here - *a debt collector does not have the legal power to speak for, or make factual admissions that will bind, the creditor.*]

Remember that any complaint you have against the product or service still applies and should still be very energetically made. The debt collector won't want to hear it, but this may simply result in his or her suggesting to the company that it drop the debt altogether. It is a violation of the FDCPA for a debt collector to pursue certain illegitimate consumer debts. Also, because debt collectors are subject to the FDCPA, they are required to provide you notice of your right to dispute the debt. Unless your inability or unwillingness to pay is very short-term and temporary, it's a good idea to exercise this right. Think of it as a way of establishing your negotiating persona of "tough negotiator." Tough negotiators assert their rights and never give them up without getting something in return.

Don't be in a rush to make an agreement with any debt collector, never admit owing anything, purchasing anything, or agreeing to anything, and after stating your position once, do not do so again without a positive indication that the person to whom you are speaking has the authority to do something for you. They are trained to waste your time and let you talk, and *it is to their advantage for you to pour energy (even in the form of anger or abuse) into the conversation, since this will wear you out, so do not do it!*

There are many people higher in authority who can and will negotiate with you more meaningfully. The first caller is really just an opportunity for you to roll over and give up if they can get you to do it, or for you to start taking charge. This is probably true of the second person to whom you speak as well. Remember, they are designed to deflect your concerns, wear down your resistance, and persuade or intimidate you into paying. You're going to have to talk to someone more important if you want to make important changes in the deal, and it should be obvious by now that you will not make admissions (ever) or make any payments until you have reached a written agreement settling the debt.

We are not suggesting that you spend a lot of time on the phone with low-level or even higher level collectors - far from it. If you are disputing the debt and have stated your position, make sure the debt collector to whom you are talking understands it. Keep a log of your conversations and make notes, and then terminate the conversation. Know that they keep notes, too, so after that first conversation, make sure the caller has seen them - ask them if they have, and if they say they haven't, tell them to read the notes from whatever day it was, and then terminate the conversation. If you don't

get some sort of negotiation back from the debt collector in the first or second call, it probably isn't going to happen. Don't waste your energy getting mad or talking to them after that.

Most collection agencies will hold the debt for a certain amount of time and then send it back to the original creditor for further decision. Then the debt will either be sent to an attorney for further action or sold to a debt buyer, and in either case you will likely be dealing with someone with more authority to settle. Although lawyers may be the scariest people to deal with, they will have more authority or real influence on the negotiations than anybody else for the company you're likely to talk to. Chances are you'll get your best deal from the company's lawyer.

Debt Collector Behavior

When you are dealing with anybody on a consumer debt other than an original creditor you have some opportunities created by the FDCPA. In general, debt collectors must provide you certain notices: the "*mini-Miranda*" warning (the statement that you are dealing with a debt collector and any information will be used to collect a debt); and your right to dispute the debt and seek *verification* of it. There are also basic fairness requirements: debt collectors are not permitted to act deceptively towards you or threaten you with actions they cannot do legally, or do not intend to, do. They are not allowed to harass or berate or abuse you. For a summary of your rights under the FDCPA - for consumer debts - see Appendix 3. You will want to make a specific note of any violations of the FDCPA, as these become bargaining chips.

As we said above in connection with original creditors, the FDCPA does not apply to non-consumer debts, but there are *some* other laws that do limit the behavior of collectors - to a lesser extent. If the creditor or debt collector violates the law, this may give you a tool you can use to change the way the negotiations go.

Debt Buyers

Debt buyers are companies or individuals that buy debt from other people who hold it, either original creditors or other debt buyers. It is not unusual for a debt to be sold several times as it works its way down the food chain. This is perfectly normal and even beneficial in our economy, and the debt buyer has a right to pursue you for all the money you supposedly owe. The debt buyer buys all the right to collect that the original creditor had and "stands in the shoes of the creditor" in asserting those rights. Each owner of the debt after the original creditor (assuming the debt is in default - unpaid), and all of

their employees, are considered "debt collectors" under the terms of the FDCPA if it is a consumer debt.

It is true that they buy these debts for a small fraction of the “nominal” value of the debt because the value has been discounted for risk, and this has practical implications for the negotiations, but do not be mistaken about the legal rights. Their “damages” in a breach of contract suit will be the same as if they were the original creditor and were damaged for the whole amount of the contract. They will sue you for the whole amount if it comes to that.

Debt buyers exist to buy large quantities of debt - sometimes as much as a *billion* dollars of nominal (face-value) debt - at large discounts and then to apply pressure to the debtors to pay it. Sometimes they sue without warning, but usually they have a large number of collectors calling and writing harassing letters. Even if they "stand in the shoes" of the original creditor, junk debt buyers are very different creatures than original creditors, however. They are debt collectors under the FDCPA, so that regulates the way the can treat you for consumer debts, but there is more. Because they buy debt and pursue it as a business, they are designed for litigation and are often much more aggressive and less pleasant than the original creditor would be. They have no real concern about the original creditor's reputation and very little need to be either nice or honest except to the extent it makes you more cooperative.

On the other hand, they usually have many more debts they can pursue if they want, so "opportunity cost" becomes more significant for them: if you resist, effectively, they may choose to pursue someone else who will not resist. And their legal risk is much higher, as we discussed above, because they rarely have what they need to prove their case against you and often cannot get it. On the whole, then, you are in much better shape against a debt buyer if one decides to sue you, and thus your negotiating posture is also much better - except that the amount of benefit you can do your credit report is reduced.

As we discussed above, you still have all the rights against a junk debt buyer that you would have against the original creditors in most cases – certainly in consumer retail debts. In negotiations, you will want to emphasize that early and often. Note also that, while an original creditor might find it convenient and advisable to defend against your complaints, a debt buyer is not going to find it either convenient or advisable to do so other than as a way to assert the debt. It won’t have easy access to any witnesses, won’t want to “waste” its time protecting the original creditor’s reputation, and isn’t designed to pursue such goals or truly disputed debts. As a practical matter, having a decent complaint against the original transaction will very likely result in the debt buyer quickly ditching its claim

against you altogether.

There are special rules regarding debts related to credit cards, however. If you have disputed the debts with the credit card (bank) and then they sell the debt, it will be virtually uncollectable in a lawsuit brought by the debt buyer (for all the reasons mentioned above). That is, your previous attack on the debt will make it almost impossible for a debt buyer to win a collection suit against you. If you have *not* disputed it, however, your opportunities to attack at that level will be limited against the debt collector because the credit card laws themselves might prevent you from disputing a charge more than sixty days after it is on your credit card bill. You should still fight it, however, and remember that your chance to negotiate (and to obtain significant discounts, too) lasts at least until the company *actually gets your money.*

The debt buyers will not really be interested in what is right or wrong about your debt - they're too far away from it to have any real idea. Their only concern is collectability. They are obviously not concerned either with their or the original creditor's reputation in the community and so have no real reason to play fair or even honestly. So - they often don't. On the other hand they *sometimes may* try to do what is right - it does happen sometimes!

The fact that debt buyers are often so large, and that they pick from an endless sea of debts they could pursue is a double-edged sword. They exist to collect from people who cannot easily pay and are designed for it, but at the same time they have so much of it available that it doesn't pay to push any one of them too hard or long. Why work hard collecting on one debt when with the same effort and very little money you could collect on twenty-five or fifty other debts where the target wouldn't fight back? And so they usually do not. If you offer a defense, they will try to see how committed you are to the defense and whether it is any good at all. If so, they will very often just let it go. Of course they usually cannot simply let it go at the first offer of resistance, or they'd get a reputation for being an easy push-over and because almost everybody resists for at least a short time. So they have to put you through the ringer a little bit - the question is how much they will do this.

Some of them will pursue a pro se defendant for a long way before letting go - if they ever do. Yet these same companies might instantly drop a case defended by a lawyer without a second look back. That's definitely one advantage of hiring a lawyer, and yet if you resist strongly enough on your own they'll usually drop it. You can definitely do it.

If you are scared to call the creditor and negotiate for yourself, you could try using a consumer credit counseling service and let them do it. Settling your debts *is* time consuming and difficult in some ways, so many people resort to a credit counseling service, but you will most likely get a better deal,

and save a lot more money, if you handle the negotiations yourself.

We are skeptical about the usefulness of credit counseling services in general. I do not believe that the creditor companies are likely to give them any better of a deal, in general, plus in most cases no one will negotiate better on your behalf than you do. The counseling services *also* often do not negotiate ***how the account will be reported***, and that could leave you with a lower amount to pay but a ruined credit report – you'll have won a battle but lost the war if that happens, so you will want to be very explicit in what you are seeking if you go to counseling services.

Chapter Seven
Negotiating with Specific Original Creditors

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As we did above, we will start our discussion of specific situations with original creditors. These come first in time, and they have the most rights against you, too. How you will negotiate depends on:

- *What kind of business you are talking to;*
- *Who within that business you are talking to;*
- *where* you are in the process; and
- *what* you hope to accomplish.

  As you are preparing to negotiate with your counterparty, your plan needs to include all of the following information.

What Kind of Business

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For negotiation, it matters very much what kind of business you're negotiating with – they are definitely not all the same. Many people who write about debt negotiation or settlement really just assume you are talking to credit card companies or third-party debt collectors, but actually there are many other types to consider – from student loans (unfortunately not much you can do there in negotiation, although there are government programs attached to the loan programs that might help), to governments, mortgage lenders and large corporations, to small businesses down the street. Any of them could cause you a lot of trouble, and you will need to talk to all of them as part of your overall debt settlement campaign.

Credit Cards

Most of what you read about debt settlement is really about negotiations and settlement with credit card companies. There's a good reason for this - credit cards have become a sort of catch-all for miscellaneous purchases for most Americans, so they tend to have a lot of credit card debt and to let it add up. In addition, the interest rates on credit cards can be so high that the debt can spiral out of

control much faster than most people would ever believe. Thus, it's a good place to start a conversation about debt settlement. There are, however, many other types of debt that should also be settled, and we will discuss them a little later.

The average person, with or without debt trouble, has more than one credit card. Most Americans carry a balance on their cards and will do a bit of a juggling act to manage these balances and keep them paid off. When debt problems begin to get serious, however, people start dropping things and the minimum payments creep up higher and higher. A good strategy for bringing these cards under control is to focus on the card with the highest interest rate and pay that off first, then pay off the next highest, and so on. As the minimum payments get larger and larger, however, this strategy becomes more difficult because you lose the ability to direct your payments as you choose, and if you miss a few payments here and there you will find that your interest rates get higher. Unfortunately it doesn't take long after that for the debt to become hopeless. That is when you need debt settlement.

A common strategy in dealing with credit cards and trying to get debt settlement is to stop paying the cards. We recommend that you seek help before you have reached the point where you need to do that if you can, but the fact is that it is hard to get a credit card bank to reduce your debt until they see that it is absolutely necessary. In any event there is a step you should take even before you ask for debt settlement (if you sense problems getting out of hand).

Getting Help

Despite all the pious things they say, credit card companies love it when you get into trouble - to a point. They make most of their money off people who carry balances, because they pile on the fees and interest rate hikes. They love that, and they have in reality built their businesses around maximizing it. There comes a point, however, when that starts to look like not such a great thing for them, and that point comes when you start losing control a little too much. When you see that point coming, then, and before things get out of control, call the customer support line for your card and ask for an account representative. Explain the problem, and ask for the bank to lower your interest rates and waive some fees.

Ask for them to do it retroactively - that is, ask for them to get rid of some fees they hit you with at an earlier point and to recalculate the interest at a lower rate. In our experience, we have noticed that even the credit card companies will often take a pretty forgiving view of interest and penalties, but are much less willing to reduce the principal of the debt – the amount that you borrowed in credit – very much. The sooner you call up and ask for help the better. Sometimes they'll do that in your very

first call, although sometimes it may take a little work to get it done.

Why would they do that? Because they can see that you are headed for default if they don't do it. That's the only reason they would give up the money you're on the hook for, so you may as well be prepared to make that point very bluntly. Avoiding the facts or pretending they don't exist won't help you. Credit card companies are used to seeing people in trouble, they know the impact of their own actions and of your situation, and you might as well put it very bluntly. Tell them that unless they can help you aren't sure you're going to be able to pay, but assure them that you really, really want to pay them.

The sooner you can do it the better for a couple of reasons. In the first place, it may actually make the difference between being able to pay them or not to pay them. In the second place, if you later have to settle the debt, there are likely to be tax consequences. If you get them to waive fees and interest and never put them on the books, they won't later be taxed as income (as we will explain) when they are removed. Remember that waiving fees and interest could be a reportable event for your credit report - ask them not to make it one. Getting them to agree to this may take you more work than anything else, but remember that they *can* do it, and it costs them nothing *to* do it. A refusal on their part negates much of the help they are agreeing to give you, and *they know that*. Make calls and keep going on this until you either get it accomplished or are certain it cannot be done.

More Help

If the reduction of rates and fees does not do enough and you keep losing ground, you may need to take the next step: going for all-out debt settlement. Should you stop paying your bills at this point or keep paying while you try to negotiate? We have heard arguments on either side of this question.

We discount any *moral* argument one way or the other. The credit card companies and their flunkies argue that you are morally obligated to pay because you agreed to do so when you signed up for the card. On the other hand, the banks themselves have had a big hand in the economic disaster that has ravaged our economy over the past many years, and they specifically attempt to capitalize on the financial difficulties of you and everyone else by charging ridiculous interest rates and fees - and by offering irresponsible credit lines to people who should not have them.

They deserve what they get, in our opinion. We note also that businesses - and most particularly banks - rarely feel any need to act "morally" as they would have individual consumers do. They line up for government bailouts on a scale unimaginable to normal people - such morals as they would have you maintain are not for the rich and powerful.

We don't buy that, but if you do, you will have to do what you think you need to do.

Stop Paying?

The question is, what *do* you need to do? You may have to stop making payments in order to bring the credit card companies to the negotiating table, and there is another, equally important reason for doing it. You can use the payments you stop making as a fund for paying off the debt in a lump sum. In our opinion, if you are in need of a significant reduction of debt, you should probably just stop paying altogether, put the money you would make in payments into a safe place, and go for the settlement.

Before you decide to stop making payments, however, you should assess your overall situation. Not making payments on the cards commits you to a course of action that has significant risks and consequences. The first consequence is that **you will have to stop using the cards on which you stop making payments**. Using a card on which you have stopped making payments and don't intend to pay constitutes fraud, and among other things that may make the debt more difficult - or impossible - to get rid of, and could taint the entire balance of the card. Not a good risk in our opinion.

The second consequence is that **it will damage your credit report** - this damage is inevitable. One problem with stopping payments to one card is that it will affect your credit rating used for your other cards. There used to be something called "universal default," in which if you defaulted on one card, all your cards could treat you as being in default - which usually resulted in them doubling your interest rates and terminating your line of credit. Legislation largely stopped that in the United States, but your credit damage is an event that will eventually probably lead to an increase in card rates and reduction of your line of credit. This means that if you opt on this strategy on *one* card you should consider using it on *all* of them on which you have balances. Or at least be aware that all of your cards are on borrowed time once you adopt this strategy.

There is also **a risk that you will get sued**. If you do choose to take this strategy, or if you're simply forced to do so, we would suggest that you contact us about a prepaid legal program we have affiliated with that is designed to protect you from the phone calls, harassment, and possible eventual lawsuits of the debt collectors.

This plan works well and cost-effectively *as an insurance plan* if you are foresightful enough to see its value ***before*** you get sued. The program has some benefits that might make it worth doing even if you are already being sued, but it is not nearly the same deal in that situation. If you see this train coming down the tracks, you can take action for a relatively low price that will significantly improve

your negotiating position, legal safety, and future prospects.

The reasons we suggest that you go ahead and stop making the payments sooner rather than later are that doing so is inevitable if you cannot make the payments, and that it is better to create a fund to pay off the credit card with a lump-sum payment. If you are spending everything you have to pay the bills as they arise, you cannot save enough to get out of debt. Note that we say "inevitable." We do not know your situation or whether it is inevitable that you will be unable to keep making payments - only you can know that.

What we do know is that things rarely get better unless you *make* them get better, and if you truly cannot make the payments now, it isn't better to suffer and fail periodically for a year before stopping completely. Better to face the facts, recognize what you have to do, and start doing it, than to pretend that you don't have to do it. If you have $30,000 in credit card debt and can only afford to make the minimum payments (or not even that) chances are good that you need to change directions.

It is also true that as long as you keep making the minimum payments the credit cards see less reason to make a deal with you. Why should they? If you stop making the payments, you change directions. ***It is a path that is going to take intention and courage***, but at least it leads to something better.

When the credit card company finally gets around to negotiating with you, you must always ask yourself what's in it for them to settle. This means two things – what do they have to *gain* by settling, versus what do they have to *lose* by not doing so. Since you have (probably) stopped paying them, it is clear that doing nothing means they will not get any money - the question is whether they should negotiate with you or sue you. They are not concerned about your feelings (either as a positive or negative, in bargaining with you), and if you have an amount that you can pay (however small it may be), you certainly don't need to worry about offending them by saying so. As long as you are personally sincere with them and reasonably polite, they will hear you out.

You will likely have to work your way up levels of authority, since the first person you talk with will probably not be able to do what you want in reducing the amount you owe. Obviously what the bank has to gain by negotiating is whatever cash you will give them – and there's simply no way to know what they will require (how much) until you hit the brick wall where they absolutely refuse to negotiate any further. Of course you should look for that wall and get the best deal possible, and this could require patience and persistence.

This use of time and the lengthy process it entails raises a question. What if someone in the credit company agrees to reduce the bill by 25%, but we don't want to or can't take that offer? This brings us to and important principle of negotiation: debt collectors rarely - essentially never - back

away from an offer they have made in negotiation without warning unless there has been some dramatic development in their ability to win or collect. Of course they *could* do so if they wanted, but the reality is that they almost never do. There seems to be some built-in human instinct against canceling an offer, and it normally results in a termination of the negotiations altogether. Since they're there to negotiate with an idea of settling, doing something so likely to end the negotiations is usually not a good idea.

What they have to lose by ending the negotiations is that they, like you and everybody else in the business world, know that if you do not *willingly* pay them, they are going to be lucky to get anything from you at all. And this is true whether or not they sue and win (this is called "collection risk"), because people in great financial stress often cannot pay any part of their bills. In fact, they probably won't sue (although some do), and if they sell the debt, they will be getting approximately 25% or less(sometimes much less) when they sell the debt to the debt buyers, although they might also get something if they have insured the account.

It is hard to know how many, or which, companies do that, however. Probably very few, because banks are in a very good position to spread the risk of loss among the many credit card customers they have and are big enough to sustain the losses they take. Those are the purposes of insurance, so there is little reason for them to buy insurance.

You want to make sure that nothing you do or say signals to the company that the collection risk is any lower than they would normally think (that is, you never want to give them any reason to believe that you have more money than they thought), or you will find it much harder to negotiate. Collection risk is your best friend here unless you have a legitimate, legally powerful reason not to have to pay. So, of course, if you have money to pay in a lump sum you have to tell them something like you *may* have friends or family who might help out, or something like that. It isn't important that the person believe you at a human level – you just have to keep the risk alive.

Or you could ask in negotiations for some sort of terms (time in which to pay) which hides the fact that you have money now if you do. Be aware that the debt collectors have access, in most cases, to your credit report, and this will often include income information, so we are not suggesting that you lie about long-term financial welfare in order to escape paying a few thousand dollars. Don't shoot yourself in the foot.

They Have Information

Here is what you must remember when talking to the credit cards about debt reduction. It is not in anybody's true interest to push you to the point of bankruptcy. There is a point where, if you can not achieve debt reduction, you will reach that point. The credit card company has an idea where that point comes. You are negotiating around that point: you want the bank to see it as lower than it is, or at least to create a situation where there is not so much risk that you will make an agreement and the sacrifices that agreement makes necessary and still fail.

Is It Wrong to Negotiate?

Everybody's heard a version of the saying: "when you owe the bank a thousand dollars it owns you, but when you owe it a million dollars you own it." As long as you owe the bank money, it has an interest in your survival. When you pay it off, your fate becomes completely unimportant to anybody at the credit card company. You're playing a game of chicken - you don't want to swerve until you've gotten what you can out of the deal. It is not completely unlikely that you'll be able to negotiate as much as 50% or more off the debt. ***At every step of the way, though, the bank's willingness to take less must come from its understanding that taking less is necessary in order for it to get as much as possible***. We are not suggesting that you lie or deceive the bank or that you try to get out of paying legitimate debts that you are able to pay. We are suggesting that you look realistically at your situation, negotiate something that truly works for you, that you communicate what you really need to the bank, and that you *keep* negotiating until you get that.

In other words, the point of the preparation we have suggested is to get you first to be able to understand exactly what you need and second to communicate that need with a creditor in a way that leaves you better off than you were before you started and gives you a chance in life. If you do anything less than that, you are postponing your failure, multiplying your own griefs, and unfairly favoring one creditor over others. In other words, you might say that failure is immoral.

The Steps

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We have already discussed the first step you should take with the credit cards companies: stop paying them and start putting the money aside. ***Obviously, you must not spend this money*** - doing so

would be disastrous because it would leave you without the resources to make the deal you are working for while you have committed to paying a steep price for that opportunity and it would inflate your standard of living at the very time when you most need to be curbing it.

The second step is to begin negotiating. If you have resources available, you can start this immediately, although in all likelihood it is going to take a while to find someone at the credit card companies who really will be able to talk with you. After 90 days of not paying, however, you will increasingly have the attention of the companies.

You should start by trying to get them to accept your offer of 25% or less, depending on what you have to have, and work from there. Remember that there is a number you have to have or else the negotiations won't do you any good, and the bank has an idea of what that number is. One of the facts you will be trying to show the bank is that *your* number is correct rather than theirs. You can negotiate as hard as you can without fear of "turning them off." They'll take the best offer they can get when it finally gets there.

You must try – hard and from your very first offer – to get the company you're negotiating with to remove any negative credit references. They ***can*** do it. They can *always* do it, as a matter of fact, whatever the person you're talking with says – although that is not to say that they always will. You must also be aware that there can be ***tax consequences*** for forgiven debt, which the IRS tends to consider as income. Don't jump out of the frying pan of debt to a bank into the fire of debt to the IRS. Make sure you can cover whatever is going to happen that way. We discuss the issue of tax consequences below, but be warned that the conclusion about just what those tax consequences are likely to be is, at this point, inconclusive.

Should You Get It In Writing?

If you have stopped paying the credit card company and then negotiated a deal, you must get it in writing. If you have come to an arrangement reducing interest or fees, you may not be able to. You need to check on it, however, and the way you do that is by knowing that the customer service representatives keep notes of everything they do. The day after you have made a deal, you call up the company and ask whether the notes reflect the deal you made. See Appendix 8 for a sample settlement agreement.

You **can** pay by check over the phone (electronically) or by mail **if** you have already used that account, or an account from the same bank, with them. *Otherwise, you should not use a check or bank draft*. What you must remember is that any information you give them will be maintained and used (by them or a debt collector) against you later if the situation comes up. So you would not want to use an

account at a bank they do not already have on their records for you since it would make collection easier for them later (and by extension, make them more likely to sue you).

Credit Report

If you pay in full, it's possible to get a "Paid as Agreed" rating; otherwise, "Settled" may be the best you can do. In recent years, the credit card companies have adopted a firmer stance on account ratings where you settle for less than was claimed to be owed. They will often only agree to list your account as "settled" but nothing better. You should always try, hard, to get a better rating, but sometimes this won't be possible. Remember, though, that they *can* do what you ask. Nothing in the law or any agreement would stop them. It would just be a question of policy – and most policies can be waived if you get high enough in the organization. That's an argument in favor of keeping at it and negotiating more – you need to make it far enough up the chain of command to reach someone who can do what you want.

And "settled" is better than "charged off." At the very minimum the account should have a ZERO balance, and 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. Remember that as long as you hold money that you could give them, you hold the ultimate and only thing they really care about, or that is of any value to them. It does a creditor no good at all to smear your credit report, but money is just what they want, so if you have money you should not underestimate your negotiating position.

All of this is simply negotiation. Your strongest weapon is their belief that you cannot, and cannot be made to, pay any more than you offer. You don't want to do anything to change that. The credit card companies, more than most companies, deal with these issues on a regular basis, but you have at least equal chances of negotiating successfully with other, non-credit card, original creditors. Remember that they will have access to your credit records as they speak with you.

Student Loan Collectors

As we said above, there is unfortunately little you can do in talking to student loan collectors. Most of the time, the debt collectors themselves really have little right to negotiate with you. The law behind student loans is that they are not dischargeable in bankruptcy absent "extraordinary" circumstances and "undue hardship," and the cases discussing the issue have been extremely *un*promising, to say the very least, about what circumstances must be in order for them to be "extraordinary." "Undue hardship" has been interpreted to mean "no likelihood of ever being able to

pay the debt," an almost unprovable burden. On the bright side, there are increasing numbers of organizations and programs out there to help, and the lending institutions have not seemed eager to sue anybody.

Although we are big believers in the profit motive and think there is nothing wrong with a company or individual helping you for a fee, we caution you about help with student loans. First, these businesses make their living off of people in desperate circumstances, and they're often really just after your money. Be a careful consumer, in other words. The other thing, though, is that because the rights are so narrow, and the collectors so limited in what they can do, the skill of the helper can only do you a limited amount of good. If you can find out about a program yourself, you can save just as much as if you paid someone to find it for you – this makes looking carefully at all your options a more important thing to do, and we include some information below to help you get started if you have this issue.

Some Types of Help for Student Loans

One of the programs that might help you deal with student loans (not a negotiation) is an "income-based" payment (IBR) program. You can find out about that here: http://ibrinfo.org/what.vp.html. The plans call for a payment "cap" of a certain percentage of discretionary income and provide for loan "forgiveness" after a certain period of time. The program seems, at first sight, to be very reasonable, with a limit on payments and amount of time that will be required. They are for federal loans.

Another sort of help is available if you are doing some sorts of public or nonprofit service as your job, you may be able to get help from the federal government. Click here for the link that will take you to the government site discussing that help. Or copy this link and paste it into your browser: http://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service#how-can-i-keep. This program is designed for only certain kinds of loans. Here's what the government says about it:

> Only loans you received under the William D. Ford Federal Direct Loan (Direct Loan) Program are eligible for PSLF. Loans you received under the ***Federal Family Education Loan (FFEL) Program***, the ***Federal Perkins Loan*** (Perkins Loan) Program, or any other student loan program are not eligible for PSLF.
>
> If you have ***FFEL Program*** or Perkins Loan Program loans, you may consolidate them into a ***Direct Consolidation Loan*** to take advantage of PSLF. However, only payments you make on the new Direct Consolidation Loan will count toward the required 120 qualifying payments for PSLF. Payments made on your FFEL Program or Perkins Loan Program loans before you consolidated them, even if they were made under a qualifying repayment plan, do not count as qualifying PSLF

payments.

There are serious limits to the kind of help this offers, but for some people this will be a way out of difficulty. Click here for more information.

Another, similar program, the "Pay as You Earn" program, is, like the IBR program above, based on a type of financial hardship. The program provides for payment caps and loan forgiveness if your payments would be too much for you to be able to afford under the standards established by the program. You can find out about that here: Pay as You Earn.

For more help on student loans, you should check out the Project on Student Debt. If you aren't sure what kind of loans you have, check out the National Student Loan Database System for Students and select "Financial Aid Review" for a list of all the federal loans to you. Click each individual loan to see who the servicer is for that loan (this is the company that collects payments from you). Remember that system shows only your federal student loans, however, and not your private or state student loans. Contact your school to see whether you have non-federal loans if you are in doubt about that, as they keep a record of them.

For more information on student loans and repayment, check out consumer finance. If you are active-duty military, there may be benefits helpful to you under the Service Members Civil Relief Act. If you're not in the military and have private loans, you have fewer options, but take a look at: Paying for College. For an article on reducing student debt or click here for a free ebook on ways to get rid of student loans without paying for them.

One of the options we found interesting was the public service type loan forgiveness program that also helps with state or private loans.

Negotiating Student Loans with Debt Collectors

Unfortunately, there's really very little or even no negotiating with debt collectors on student loans, as we said above. There seem to be no market pressures on them to settle at all - they aren't worried about the debt expiring, the companies that issue the debt are large and government-subsidized, and "educational loans" are one of the last great sacred cows in our country.

The positive side of dealing with student loans, however, is that while the collectors will call and bug you, somebody in the collection department usually does seem to take notice of the actual

financial reality you are facing. If you tell them that you do not have the money to pay, they will often - usually even, it seems, refuse to agree to partial payments - but then they usually don't take any type of collection action, either, and they only very rarely sue anybody. The downside here is still significant, however, as the information might very well end up on your credit report and cost you that way. And eventually the lender might get around to suing you after all if they find out you have property, so they may create problems if you own your home.

Governments and Taxes

Governments, like student loans (and actually, they're related), are not open to the kind of negotiations we described for credit cards. It is quite possible, however, to negotiate with them. In negotiations with a government on taxes, assuming you are not rich and powerful, you simply will not have litigation or litigation tactics available. Instead, you may basically hope to find someone who will work with you and throw yourself at their mercy. That may work for state and local government. For our purposes, though, we just want you to know that you can probably get a *lot* of help from government on taxes, and you should certainly consider it as you work out your debts. You should consult a tax accountant before doing this, however - and particularly as regards federal tax.

Small Businesses

Small businesses usually have a different approach than large corporations. Most credit card companies are not willing to talk to consumers about options until the account is 60 to 90 days late. That makes a certain amount of sense in the eyes of a large corporation, since why, you might ask, would they offer to let some part of the debt go if you are current on your payments? That's the way banks think, but it isn't *necessarily* the way the small business person down the street thinks – they're able to wake up and smell the coffee as well as you are in many cases.

If you can see serious trouble coming, they may be able to see it, too, and in the case of the small business owners, it can make a lot of sense to talk to them *early* in the process of debt trouble. They can really be your friends, and you'll likewise want to support them if and when you can. Obviously working things out early gives you your best chance of avoiding negative credit references and bad feelings, but remember that they're not overly concerned about your credit report. Their ultimate question, as it really should be if they want to survive as a business, is "what's in it for me?"

For a sample of the sort of advice the small businesses receive regarding debt collection, check out Advice for Small Businesses, and notice method 2, step 6 in particular:

> Negotiate with the debtor, if you feel it is your only chance to receive payment. Ask what they can pay, or offer them a discount, depending upon the situation. If you know the business is avoiding payment, it may be less expensive to give a discount and never deal with them again, than to hire a collections agency or a lawyer.

Essentially no one wants to "give you money" or "help you out." They're in business to make profit for themselves and not to share your pain. That means that although you are very well aware of your own situation, you must consider the matter from *their* perspective: why would they help you – how would it benefit them? There *are* reasons, and you must persuade them that it is in their best interest to do it. Here are some reasons you should consider:

- They're more likely to get paid **faster** if they work with you, since suing you is time-consuming;
- They're more likely to get paid **more** if they work with you, since suing you is expensive;
- They'll earn **your loyalty** as a customer, or you will endorse or refer them business; and
- You don't have the money and aren't ripping them off (so helping you is **nice** and good for their reputation).

All of these things will matter to them, and you may think of others. Be aware that "reputation for helping out" is definitely a two-edged sword. No one wants to be known as a "soft touch," since that's an *automatic trip to the back of any payment line*. On the other hand, being known as compassionate, helpful and community-minded can have many advantages for a business, and the benefits to the business could far, far exceed their price. You could offer to give a testimonial, for example (about their quality and the commitment to your community, not about "helping you out"), or to make a certain number of referrals as a way to encourage them to negotiate with you.

Depending on the size of your debt and the type of business, you might even be able to work out a full deal for value in terms of endorsements/referrals in exchange for debt forgiveness. It is not uncommon for businesses to offer a 25% referral fee to people who send them business. Be bold and creative.

Notice the last part of the advice above (offer a discount "and never do business with them again.") You will simply have to face the reality that one down-side of debt negotiations is often the destruction of the business relationship. The more value you can give them (i.e., the testimonial we mentioned above, or anything else you can think of that might help the company), the less likely is the relationship to be destroyed. If that is important to you, you need to be creative about helping the

business, and for small local businesses, anyway, you will probably want to do some of this as a matter of damage-control for your reputation anyway. People don't like not to get paid, that's for sure, but there's a big difference between someone who tries to give back versus someone who simply disappears - in most people's minds at least.

Medium to Large Corporations

Most people thinking of debt settlement think of credit cards, and in reality credit cards have become sort of the catch-all for miscellaneous debt. If you have had work done on your house, though, you might have bills of a different sort, and there are many other ways such bills could come up. You should not forget these as you consider your debt situation.

The thing to remember about every business is that they like to get paid as much and as quickly as possible, and with as little fuss as they can. That gives you a lot to work with as you attempt to negotiate. Most of these businesses will be very flexible with you... if you can find the right person to talk to. Unfortunately, larger corporations are different from small businesses, and it can be difficult to find anyone with even the authority, much less the desire or corporate duty, to do anything for you until you are well behind on your debts.[2]

It's worth a shot, however, because it doesn't cost you anything to try, and it could do you a lot of good sometimes. As with other negotiations, patience and the use of time are very important. The longer you wait, and the later the bill, of course, the more likely someone from the company will find you - but by that time the dynamic will have changed. That wouldn't make negotiating impossible, of course, but if you get to them early enough things might be a lot friendlier, at least.

In a medium-sized company, you might find yourself talking to anyone from a collector to a partner. If you made the *purchase* deal with an individual within the company, that's probably the person you should start talking with about relief from the debt, both because that person may have some good feelings left over from getting your business and because when you don't pay people in the company will be looking to him or her anyway. If you talk to this person first, you give her a chance to manage the company response and do some damage control. In a way you are both in the same situation, as your not paying will hurt this person's standing in the company. Give that person a chance to help.

2In my experience, letting bills go unpaid will not work with title companies or car dealerships. That is because they can relatively conveniently take back (or take away) the security, i.e., the car. If that is the situation you have brewing, you may want to read an article on garnishments or Special Issues in Debt Litigation.

We have suggested a more forthright approach with smaller companies than we do with credit card companies, but certain of the rules still apply. You should be very careful about admitting the debt or any part of the debt, or solving any of the other problems the creditor might have. However friendly individuals within the company may seem, they are still on the other side of this transaction. Don't make it easier for them to sue you than to compromise with you, and that means not making any admissions or telling them information about your assets.

Whatever happens at this stage, recognize the rules of the game, get over it, and try to make the best of things. If you are patient and resourceful, you will have your opportunity to work within the system even if they won't help you at this beginning, at least to an extent.

Negotiating with Banks on Mortgages

It is hard to negotiate a significant deal with the bank that holds your home mortgage because they can take your home away if you do not pay. This is also true of other debts which are connected to specific properties or items of property through the debt instrument. Nevertheless, the situation isn't necessarily helpless.

Two Types of Debts

There are two main types of debts: secured, and unsecured. An ***"unsecured debt"*** is a debt which is owed by you personally but is not connected to any specific collateral. If you do stop paying on this debt, the creditor (or holder of the right to receive payments) may sue you personally. After getting a judgment on an unsecured debt, the creditor can then get in line with other people with judgments (if any) and try to garnish wages or accounts. That isn't pleasant for you, of course, but these collection techniques rarely reach your house – there are state exemptions in many cases, and bankruptcy provides you protection as well. If you are unable to pay the debt with assets that can be reached by the creditor, then it is, basically, out of luck and cannot get its money.

A ***secured debt*** is far more dangerous to you and beneficial to the creditor. In that situation, the debt in question is "secured" by some specific property, and for normal people, this means that your house payments are "secured" by your house. Stop making those payments, and the bank is likely to be able to foreclose on you, kick you out of the house, and sell it to get its money back. You probably know this very well. Bankruptcy can slow the process down a little bit, but in most cases the delay is

not that significant, and you will almost never get to keep property which is securing a debt you are not paying.

The other thing you need to know about the foreclosure process is that when your house or property is sold, it is sold in a way which reduces its value on the open market (because certain warranties are not provided). There is a good chance that you will end up still owing money on the mortgage even after foreclosure, and in most cases you can be sued for that money personally.

Thus in most cases the bank would seem to have little to lose in foreclosing, at least in a legal sense. But legal senses don't pay salaries, of course, so the question the bank will be asking is still the same practical one as any other creditor: how to maximize repayment.

If your house is "underwater," meaning that the amount owed on the mortgage is more than the house is worth on the open market, and you do not have much money, the bank will have the classic problem of any debt collector: collection risk. How you proceed is going to be a question of how much money you owe in back payments. The loan officer usually does not *want* to foreclose on the property. Whether or not the bank would ultimately profit from the foreclosure, it still causes the loan to appear negative for a time and to leave the loan officer's portfolio. It also causes the bank to have to attend to the property in various ways, and although banks are of course set up to do that when necessary, it isn't what the people you will be talking to want to do.

What the bank officer is quite eager to do, however, in most situations, is to stop the "bleeding." In other words, foreclosure begins the process of limiting damage to the bank; they are not eager to extend that process very long without some assurance that it will make the bank money to do so. So what are your options?

As usual, if you have money, you have options. If you have or can get some money refinancing the house might be an option. It may be possible to get a better loan with another company or even the same one. With low mortgage rates these days, you should certainly consider the option. For information and help understanding and negotiating a mortgage loan, check out Are Mortgage Prices Negotiable?. They *are* negotiable, and this article will tell you some of the things you need to know to prepare yourself for the process. Also check out Shopping for a Mortgage, the FTC's material on the subject.

Negotiating with banks on overdue mortgage payments is a difficult thing, and most of them simply will not reduce the amount of money you owe - they just have very little incentive to do so.

Your rights are pretty limited unless the bank has gotten into trouble with mortgage backed securities or some other behavior that makes it impossible or difficult for them to foreclose. Therefore, before negotiating at all with a bank you should attempt to find out whether they can foreclose.

In order for a property holder to foreclose, it must have the title to your house and be able to prove true ownership of the mortgage on it. Finding out all of these things isn't necessarily easy for you, but we suggest you call up the bank and ask to see the paperwork. Track down any changes that have been made in where you were supposed to make your payments, and go down to the courthouse and look at the deed book that is a part of the public record.

There are some reasons that a mortgage bank might cut you some slack in the sense of working things out with you, of course. As we said above, if the debt is sufficiently underwater, the house itself does not offer very much security to the loan - if you suggest a deal that would offer the bank more chance of getting its money

Negotiating with Car Dealerships

Maybe the only less ideal negotiating counterparty than a mortgage bank is a car dealership. Not only is the loan going to be secured by the title of the car itself, but the dealership will likely have installed either a tracking device or a disabling device (or both) on the car so that it will be easy to repossess. For these reasons, we have suggested that if you have or foresee financial difficulties that will prevent you from making your car payments, you must face the facts immediately and sell the car. For more information on this, check out Repossession in the Real World.

You have very few "debt settlement" options with a car dealership in the ordinary situation. This story might be different if you have some extraordinary event or condition - for example, if you happen to be a known frequent customer (on the positive side) or if you are alleging fraud or some sort of misrepresentation (on the negative side). But either of these situations would give rise to negotiations which would be beyond the scope of this book.

In our next chapter we will discuss negotiations with debt buyers.

Chapter Eight

Negotiating with *Debt Buyers* in General

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Negotiating with debt buyers of any sort is far different than negotiating with original creditors. While some of your rights remain the same, many of them expand significantly, but on the other hand your opportunity for really repairing your credit are reduced because by the time a debt buyer owns the debt the original creditor has already done damage to your report.

Preliminary Issues

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Much is different when you are negotiating with debt buyers rather than original creditors. The debt buyer is a company different than the one you originally owed the money to, and so the first issue this raises is the very serious question of **ownership of the debt**. This risk/opportunity simply cannot be overstated: there is a significant chance that the company trying to get money from you does not legally own the debt - and that is true even if the company has filed a lawsuit against you because so much of the collection process is automated. Even if the debt buyer does legitimately own the debt, there is a good chance it won't be able to prove certain crucial parts of its case against you if the matter goes to court.

A valuable first step in your defense and/or negotiation of this sort of debt is to seek verification of the debt. Click here for a full discussion of the issue and sample letters that will help with this phase of debt defense. Before you give a serious thought to paying anything to settle a debt with the debt collector you simply must make sure you are dealing with the right party.

Verification and Proof of Ownership of the Debt

Some people are reluctant to require this – or to make any demands in the face of a debt collection call at all. The right to verification is very safe for you to exercise. It will force them to stop collection activities for a time – thus it will cost you nothing and gain you some time to think and prepare. It's a great thing to do – just remember that it doesn't apply if they've already filed suit: time will continue to run on the lawsuit even if you ask for verification at this point.

Every sale of your debt - from the original creditor to a debt buyer, and then from one debt buyer to another - will be in writing proof. The debt collector contacting you will have it somewhere, and you should demand it. Not just verification, in other words, but proof to your satisfaction that *if you pay this company* you have paid off the debt. To be clear, then, you should seek verification and then go beyond that to require proof of actual ownership of the debt. While you are demanding this, they may be bugging you for money, but you should stand your ground. If you pay the wrong company all your efforts may go down the drain along with your cash.

Liability for the Debt

It is true that a debt collector could sue you in court and *might possibly* win a judgment against you, but if you fight intelligently, the chances of their winning are not very good, and you can be almost guaranteed that if you fight hard and well, you can make collecting the debt extremely unprofitable to them. They know that too, so if you show the right signs of fighting early enough, they will often simply walk away. A good verification demand is part of that showing of defense. Furthermore, if you are negotiating, they are unlikely to bring suit – although stranger things have certainly happened.

Statutes of Limitation

Another thing you should do is check the statute of limitations. We mention statutes of limitations here in connection with debt collectors rather than in the discussion of original creditors because statutes of limitations are measured in years – thus it is more likely to come up in connection with a debt collector. But if your debt is old, you should check the statute of limitations regardless of who is pursuing the debt.

The law here is actually a little complicated to discuss in general terms. The statute of limitations is the amount of time a creditor or debt collector has in which to bring suit against you. This time is set by the ***state law applying to the claim brought against you***. That is, the statute of limitations will depend on **both** the state in which you live or which is specified by your contract **and** the way the debt collector frames its claim against you (as "breach of contract," "suit on an open account," "account stated," to name just a few possibilities). Click here for a chart of links to statutes of limitations.

Remember that the statute of limitations begins when the right to sue begins (which is not always clear, but relates to when you stopped making payments *and has nothing to do with when the debt collector purchased the debt*) and can also be "tolled" (held up) by certain actions. Making partial payments often will toll or reset the statute of limitations, so be very careful about that. We generally suggest you never make payments to a debt collector until you have a very clear idea of its right to collect any money and know exactly what you plan to do about that and how you plan to do it. In other words, do not pay a debt collector to "go away and leave you alone." That would be asking for a huge amount of trouble.

Agency Abiding by Regulatory Responsibilities

Before negotiating with a debt collector, you will at least want to be aware of whether or not it is properly registered to do business with you. This won't affect the validity of the debt or have any impact on an actual settlement, but it is a thing to know, as it might render any threat of legal action legally impossible (and thus a violation of the FDCPA, which would impact the settlement very significantly) as well as slow down an agency trying to do bad things to you. For more on this subject, read the rules for debt collectors in Appendix 3.

Reasons to Negotiate with Debt Collectors

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Suppose, however, that you are satisfied that the debt company owns the debt – and can prove it (and actually *has* proven it to you), that the statute of limitations hasn't run out, and that the debt company has shown some persistence, and that you think you might like to settle the debt. Or suppose that even though you believe the company could not prove its case against you if you really did fight it (but that it does own the debt - you have to believe that), you still want to settle the debt.

Why would you want to do that?

There are some good reasons for settling. In the first place, **fear** is a perfectly good reason to settle a case. It's actually why most cases are settled, as a matter of fact, because no litigant can be sure the judge or jury will do what is right, even assuming the litigant believes he or she is right. **Expense and time** are also good reasons you might want to settle a case. If you have a lawyer it will take time to defend yourself, and a lot of money, of course. Without a lawyer it will take less money but more time, and you may want to spend your time in other ways.

There's also a psychological reason for settling even if you aren't afraid. Lawsuits are terrifically distracting. When you are defending yourself pro se there are compensations for this distraction, maybe, because you are learning some important new skills and powers you probably didn't know you had, but if you are represented, the burden of the lawsuit, while less than if you are pro se, is entirely a waste. You could want to settle the lawsuit simply in order to move on with your life. But you needn't, and shouldn't, settle on terms that amount to rolling over and losing the case.

Negotiating with Debt Collectors

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You know that debt collectors pay only a small part of the "nominal" value of the debt – "pennies on the dollar." They want and expect to process the debts quickly and smoothly. If you demonstrate that you can and will stand up for yourself, you can probably negotiate a very favorable settlement. As with negotiations with the original creditor, and even more so, actually, this negotiation may well take quite a long time. That is, it will take weeks and possibly months of negotiations (See Appendix 1 for a case study on negotiations), but of course most of that time is in waiting - it won't take *much* of your time.

One problem with these negotiations, ironically, is that the debt collectors will chronically *under*estimate your ability to make trouble for them. That is ironic because debt collectors usually do not have what they need to win in court and so should lose almost every time if you choose to fight - but so many people do not fight that the company will assume you won't or can't. If you want to accomplish as much as you can in the negotiation, therefore, you will have to combine patience and the ability to make them do things that cost them money and weaken their case with the ability to pay when the time comes – all without ever tipping them off to the fact that you have some money you could use to pay them with. Again, your unspoken greatest threat against the debt collector is your potential inability to pay even if you lose, and you must never weaken their concern on that score.

You can negotiate for a few things from the debt collectors. We will discuss these things after we talk about the basics of communicating with them.

Communicating with Debt Collectors

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We believe **you should never initiate** the call to a debt collector. That means that if you get a letter or phone message from a debt collector you should think hard about responding in any way. The

reason we don't lay down a simple rule here is that the term "initiate" is subject to interpretation, but the important rule behind that is that the Fair Debt Collection Practices Act (FDCPA) applies to communications initiated *by the debt collector*. Thus to be sure we would not make the phone call in response to a letter. Returning a phone call is considered by most courts as **not initiating** the call, so you could probably return a call, but we still wouldn't. If they've got your number, believe us… they'll call again.

We believe that conversations with a debt buyer are significantly different than conversations with an original creditor. We think there is little to be gained by being proactive in trying to settle, debt buyers have little reason to work with you in good faith and will not be impressed by your calling them. On the other hand, you definitely would not want to waive or lose any protections offered by the FDCPA

There is only two good reasons for you to talk to the debt collector at all: to get information you need from them, or to make or receive a settlement offer. When you accomplish that goal, you should hang up. If you want to get vital information from the collection agency, or even "feel them out" for what they would take as a settlement, that's fine. Just **remember to stop talking and hang up when you get what you need**.

What to Say

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1. If you do talk to them, start off the conversation by getting the name and physical address of the agency and the agent, and the direct line. The fax number is good, too.

2. **Get your terms *in writing*** before you even *consider* making a payment. *Never* expect a creditor to meet an agreement that was made verbally, and be ready to enforce it even if it is made in writing. *Everything* must be in writing and, even then, you will probably have to fight to make the debt collector live up to his end of the bargain. We have sample agreements and negotiation letters in Appendix 8.

3. **The older the debt, the smaller the settlement**. That is both because the debt collector paid less for the debt in the expectation of receiving less and because the legal claim, which was weak to begin with, is even much weaker now. There is actually very little reason for you to settle these claims. The original creditor will have damaged your credit report, and this damage can only last seven years - you might want to settle in order to avoid any risk of getting a judgment against you, which might extend the damage to your credit report even longer.

4. **It is far better to settle these cases with a lump sum payment**. We suggest that you not agree to make payments unless - at a minimum - the debt buyer agrees not to charge any further fees or interest.

5. **Do not make interim payments before you have reached an agreement**. As we have discussed, making a payment often tolls or restarts the statute of limitations, thus any form of payments over time risks reviving the debt, and if you do not satisfy a settlement, often the whole debt will be due (the settlement will be negated). In addition, making payments will be used against you if you argue later that the debt was not yours. Therefore it is usually a good idea to wait until you have enough to pay a settlement in one lump sum before agreeing to anything. Remember, the older the collection, the more eager they will be to settle.

6. **Keep good records.** This can be the difference between good and bad negotiations. Don't expect them to remember you or what you agreed upon. Also, your records and notes may be useful to show there was a violation of the FDCPA.

7. **Send all correspondence via registered mail, return receipt requested** (about $5-$6 a letter).

8. **Keep a copy of every letter you send.**

9. **Keep a log of when you spoke to the agencies, and who you spoke with, and notes of everything said**. Ask for the name of the supervisor of the person you spoke to, as the turnover rate at collections agencies is high. It is illegal for them to attempt to deceive or trick you, but… they will try to do that all the time.

10. **Follow up all phone correspondence of any significance** with a registered letter verifying what got said. Remember that if you want it to count, it must be in writing.

11. Remember that every amount claimed to be due by a debt collector cost them far, far less to obtain. Don't be impressed by the amounts of "interest" and "penalties" they claim, or the total amount. Those are just bargaining chips. They are negotiating for as much as they can get, as quickly as possible. That's their goal in a nutshell.

12. **Never admit owing the debt** – not to them, not to anybody; not on the phone, and not in writing. You can settle debts that you dispute, and you can and should negotiate without admitting the debt. That's because if the negotiations break down, you don't want to give them evidence they do not already have that you owe the debt.

13. **Never seem eager to settle.** Take plenty of time to reach an agreement. Never tell the debt collector that you have any reason to hurry - that you need to settle the debt because you're buying a home, car or anything else. If you do, you can forget any kind of settlement. The creditor will insist on the full balance because that hands them all the power. Remember that it is their goal to settle as quickly as possible; you really won't have to worry about speed. If for some reason they are dragging their feet and you want to push them for an answer or apply more pressure, you can do that by mentioning bankruptcy or the possibility of suing them for a declaratory judgment that the debt is not valid.

14. Try not to accept the first, or even second, settlement offer (or any offer they make, unless you have some powerful reason to think it's the best offer you will ever get – that might be the case if a lawyer, after filing suit, tells you it is, but otherwise it's very unlikely). Remember that you aren't really accomplishing much if the first debt collector (caller) makes the deal. Debt collectors have strict rules regarding authority to settle. If you stick with the negotiations, you can do much better than anything the first caller can offer you, and the money you save will have a real and lasting impact upon your quality of life

15. **Once you hand over the cash, the negotiating is over.** If you forgot to negotiate the way the listing appears on your credit report, for example, you will be out of luck. ***Start*** your negotiations with a point-by-point list of things you want, and ***don't end the negotiations until*** you have made sure that each of your items has been addressed to your satisfaction. Once it's over, it's over, so make sure you get it right the first time.

16. Do not give the debt collector financial information. Never give them new information on bank accounts or jobs, because this would make it easier for them to collect and, by the same token,

more likely for them to sue you. As we said above, when negotiations are over, they are over, but the converse of that is also true: they are not over until they *are* over – you have no agreement until there is an agreement, and the information you give them during negotiations can be used against you (not necessarily in court, but in reality).

What to Negotiate

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First and most obviously, you will be negotiating about money: how much and when you will pay. Remember that a debt buyer's chances of winning in court are slight, so you should negotiate a low number. How low? It could be as low as a mere "token" payment (i.e., $500 to settle a claim for over $10,000) if it occurs late in a lawsuit, but you are likely to bump into a hard spot somewhere around 25-50 percent if it's sooner than that. The further it goes, and the more fight you put up, the lower the settlement payment will have to be, in general. You might think that the longer the lawyer works on a case the higher the settlement would be, but that's not the way it works - it's just the opposite, usually.

Secondly, you must negotiate your credit rating with the debt collector. ***This is very important,*** as a "paid" collection is as negative to your credit rating as an "unpaid collection." All your negotiation efforts and payments will do nothing to rebuild your credit report if you neglect to negotiate your credit rating in the process. Debt collectors can and often will delete all credit references, and you should insist that they do so. It costs them nothing to do, and if you make this an absolute condition, they will do it. If you are being sued, and negotiating, you should still do this.

You must understand that the debt collector cannot alter the reports made by the original creditor – you are simply talking here about what the debt collector does. But getting them to delete the debt gives you some leverage you can use to influence the original creditor when you go back to clean up your credit report.

If there is a lawsuit, you must get the case dismissed "with prejudice."

In a case or claim with a debt collector you should also negotiate for an agreement by the debt collector not to file a 1099C form claiming that it "forgave" you the debt. This is important, as otherwise you may end up being chased by the IRS for the money you didn't pay the debt collector.

Chapter 9
Making the Agreement

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You will want to get your credit report before you start talking to your counterparty, whether it be a debt collector or original creditor. You should know independently what they've already done to you, and plan to verify that with them as well. When you make a deal with them the deal will probably include some "integration" clauses - that is, a statement in the written deal saying that the words of the deal are the complete deal, that you knew everything you needed to know, and that nothing that *isn't* written down in the agreement is part of the deal.

One of the effects of those provisions is to make it impossible (or nearly so) to add conditions of any sort after the deal is made. And you must assume that they will not do anything good for you that is not specifically stated in the agreement. That means you should assume they will trash your credit report and send you a 1099 form unless you specifically make them agree not to do so. And that agreement has to be in the contract.

Got that?

We are not saying that the debt collector is malicious - although many of them are - but if they have a chance to make money in any way you have to believe they will take it. Make sure you get everything you want in writing. See Appendix 8 for a sample agreement, but you should not take this agreement as complete - rather, it is a template you can use, and you must use your judgment as to everything you want in it and the language you use for it.

Appendix 1
Case Study: Two Deals Compared

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This Appendix compares two different, actual, outcomes that were recently reported during different teleconference phone calls for members of Your Legal Leg Up. **In the first example**, a debt collector was threatening to sue and individual for about $15,000, and the individual "negotiated" (before becoming a member) a deal for an initial payment of $100 good for two months and then payments of $260 per month until the entire $15,000 was paid. The individual did not mention whether he had received a reduction in interest and/or penalties, so that normally means he did not - but in this example let's assume he did. The individual also did not mention whether the creditor had agreed to repair his credit report - and that would normally mean that no such repair occurred. In exchange for the money, then, the debt collector agreed not to bring the lawsuit and waived interest and penalties. **In the second example**, the member reported negotiating a deal with an original creditor for fifteen cents on the dollar for a $10,000 debt. Family members helped him make the payment. In both situations, there was really no doubt that the debt was legitimate - or that the person being pursued could not afford to pay it.

The First Deal

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The first deal took one negotiating session and about fifteen minutes to accomplish. It *did* achieve at least one worthy goal, as the individual at least obtained the collector's agreement not to bring suit, which would have seriously "inconvenienced" our member (he wasn't completely clear about what that meant). We have also assumed that the creditor agreed to waive interest and penalties on the $15,000 the individual would ultimately pay. The deal negotiated was designed to put off a real decision about bankruptcy, actually, as the individual wanted to spend his time and energy looking for other solutions, he said.

That isn't necessarily a *terrible* deal, but it really leaves the problems unsolved, and it "locks" the individual into bankruptcy unless something really lucky occurs. If something really lucky *does* occur, then the individual will end up sharing a lot of that luck with a debt collector that really didn't do much for him (is that what you want to do?). If the individual's hopes *don't* work out and bankruptcy

turns out not to be workable for some reason, the deal could turn into a major problem, as the deal established a specific amount in dispute and created a whole new statute of limitations good for many years in the future. Plus it gave the debt collector money immediately in exchange for a simple telephone call. If the individual fails to keep the deal, the interest and penalties will probably come back into the total amount owed.

One advantage of a deal in which you get only a delay in payments and waiver of interest and penalties is that there are no tax consequences.

Now let's consider the second deal.

The Second Deal

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In the second deal, the member agreed to pay $1,500 to get rid of the debt altogether, and in return, the original creditor "toned down" the member's credit report, although it didn't completely clean it up. This deal finally came after over a month or two of negotiations while a lawsuit was going on. The second member was ***willing to defend*** a lawsuit that had already been begun (although he believed there was really no question that he would have, eventually, lost that lawsuit because the creditor had shown him that it had all the documents necessary to prove everything it needed to prove), ***and*** was patient enough to make several telephone calls over at least two months.

During this time, the member made use of Your Legal Leg Up's teleconferences for members and both asked for suggestions in defending the case and reported on negotiations. In the calls with the creditor (and by defending the lawsuit), the member "showed" the creditor that it wouldn't be able to do better if it continued to sue him. Finally, the creditor agreed and made the deal.

Along the way, the member had received other offers from the bank that he could, somehow, have managed to afford, but he had discovered some pleasure in negotiating and wanted the best deal he could get. He was at last convinced he *had* that deal, and he took it. In doing so he cleared a big obstacle to his future well-being out of the way. There would be tax consequences on this deal - the creditor will issue a form 1099 to reflect the "forgiveness" of $8,500 of payments, and this will be reported as income. The member was working part time, however, and had children to support, so the income will probably not even result in any tax at all, although if it does, it should be noted that the member's deal will cost an additional 28% of $8,500 - $2,300 that will be owed to the IRS (plus state

taxes). That would be a problem if it came up by surprise, but the member was aware of the issue.

The member spent at least 25 hours - let's say 100 just to be conservative - in negotiating and defending the lawsuit. That's twelve 8-hour days. In exchange, he obtained a deal worth $8,500. That's $85/hour for 100 hours of work. Had he not made the deal but paid the minimum payments until the $8,500 credit card debt was paid...? He would have paid at least twice the amount owed. So in reality the negotiation paid far more than $85/hour, and there are no tax consequences for the "invisible" money that was saved - all the future interest and penalties that were avoided by paying off the whole debt.

Compare the Results

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Consider the different futures our two individuals created for themselves. In the first case, the individual put off the ultimate showdown with the creditor. He hopes that something good will happen in the meanwhile, but he is living in the shadow of that debt until it does. If it does happen, he has to give away a significant amount of money - hopefully that won't be so much that it turns the good luck into basically... nothing. In any event, Person One will be paying taxes on $15,000 after he sends the bank the $15,000. And that is the *best*-case scenario. If the good thing our individual is hoping for does not happen or does not happen on time, things get a lot worse pretty quickly. The negotiation got Person One satisfaction - it got the debt collector off his back for the time being - but at a very high cost.

Person Two created a whole different kind of future for himself. He neutralized a debt of $10,000 for a payment of $1,500. If he had not done that but somehow managed to make payments on the debt, he would have paid far more for a very long time. Those payments would have put stress on him every month for years - if he could have made them at all - and he would have had to take them into account for every decision of any importance that whole time. His credit report would have shown a trail of late payments and then, we hope, a long string of Instead, he has the happy memory of taking control of the debt, flexing some new-found muscles, and making everything better.

Of course, he'll have to keep doing the right things, right?

Appendix 2

Tax Consequences of Debt Settlement

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If and when you settle a debt for less than what the company says you owe, you may have tax consequences. The IRS treats "forgiven" loans as income. How can they know how much of your debts have been forgiven? The creditor who forgave the debt will issue you a 1099-C form and send the information to the IRS. Unfortunately, the information on exactly *when* the company should issue a 1099-C form, or even which one should issue it, leaves far more questions than it answers, and these questions have for the most part not been adequately addressed by either the IRS or the courts yet. We include the information below as a way to flesh out our suggestion that you seek a tax professional's advice and to give you a sense of what to watch out for.

The Law Is Not Clear

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We believe the crucial issue regarding debt forgiveness concerns whether the entity claiming to have forgiven the debt can legitimately claim that you "owed" the debt. Many argue that if you seek validation of the debt and do not receive an adequate answer, you should not receive (and should oppose) the 1099-C, although how exactly one should "oppose" it is not entirely clear (seek professional advice – the advice we have received has been conflicting). Our position is that if you manage to force the debt collector to dismiss the case with prejudice you have proven that the debt was not "owed" and cannot have been legitimately "forgiven." There is a caveat to that, though: if your defense was on the basis of the statute of limitations, the IRS itself says that such a victory would trigger the obligation of the company to issue a 1099-C.

While the IRS is not the final word when it comes to interpreting the tax laws, it seems reasonable to think that if your legal position admitted the debt but asserted the statute of limitations, you have admitted that the debt existed and has been eliminated. This would be income. On the other hand, if you also contested the liability on other grounds that do not admit that the debt was ever valid or legitimately yours, that would seem to lead to a different conclusion.

In general, this area of the law (when companies must file 1099-c forms, when or how you would oppose them, or on what basis) is unfortunately not settled – **and probably won't be for many years**. As a practical matter, then, we suggest that you include paying taxes on any forgiven debt as part of your strategy and consideration in negotiating settlement, or that you seek tax advice you can live with. If your debt is forgiven because of insolvency (bankruptcy), you might not have to pay anything on forgiven debt because of a specific statutory exemption – you should consult a tax accountant if this issue comes up.

What is a 1099-C Form?

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A 1099-C is a cancellation of debt form filed with the IRS by a creditor that has either reached a settlement with a debtor for less than was originally owed, or has "forgiven" (given up as lost) the entire debt, concluding it will never be able to collect the debt. This includes stated principal, stated interest, fees, penalties, administrative costs, and fines.

When is a Creditor Required to File a 1099-C?

Creditors are supposed to file a 1099-C with both the IRS and with the debtor for all debts of $600 or more under the following circumstances:

1. Cancellation or extinguishment (making the debt unenforceable) occurs in a receivership, foreclosure, or similar federal or state court proceeding.

2. Cancellation or extinguishment occurs when the statute of limitations for collecting the debt expires, or when the statutory period for filing a claim or beginning a deficiency judgment proceeding expires. According to the IRS, however, this only occurs when a statute of limitations affirmative defense is upheld by a final judgment.

   This requirement may put a debt collector in an untenable position, since it would violate the FDCPA by filing suit on a debt past the statute of limitations, but won't be considered to have forgiven the debt until it does so. On the other hand, it may be that debt collectors would rather not bother with the forms anyway, so perhaps this allows the debt collector to avoid a duty it

would prefer to avoid. And yet again, if a debt collector were to file a form 1099-C and then sell the debt, that would seem to be either fraud or a violation of the FDCPA, giving debt collectors another incentive to avoid filing forms 1099-C and perhaps explaining why so so often do not.

3. Cancellation or extinguishment occurs when the creditor elects remedies that by law end or bar the creditor's right to collect the debt.

4. Discharge of indebtedness by agreement to cancel the debt at less than the full amount owed. [This would be the settlement we have discussed, triggering the duty to file.]

5. Discharge of indebtedness because of a decision or a defined policy of the creditor to discontinue collection activity and cancel the debt. A creditor's defined policy can be in writing or an established business practice of the creditor. A creditor's *practice* to stop collection activity and abandon a debt when a particular nonpayment period expires is a defined policy. [This interpretation would seem to put a lot of risk on creditors and debt collectors.]

Are you required to report an amount filed via a 1099-C by a Collection Agency, or only if it is filed by the original creditor? It (may) depend on whether the collection agency can prove you owe the debt, which they may not be able to do since your account may have been transferred so many times that the proof of your debt has been left behind in the process.

Debt validation could be important. One advisor says that if the collection agency cannot prove that you owe the debt, but they have filed a 1099-C, you might include with your tax return a letter stating that the agency has no proof that you owed the debt. According to some, y*ou must mention the 1099-C even if you oppose it, or you will apparently automatically be subject to an audit by the IRS*. Exactly how you mention and oppose the 1099-C was disputed among the experts we consulted.

Sometimes you can exclude the debt if you qualify. That means the amount, while it is noted, is not counted toward your gross (taxable) income. Here are some of the circumstances which may qualify:

- Cancellation of qualified principal residence indebtedness.

- Debt canceled in a Chapter 11 bankruptcy.

- Debt canceled due to insolvency.
- Cancellation of qualified farm indebtedness.
- Cancellation of qualified real property business indebtedness.
- Cancellation of certain qualified student loans.
- Canceled debt that if paid by a cash basis taxpayer is otherwise deductible.
- A qualified purchase price reduction given by a seller.

Note, the two most common circumstances under which tax payers qualify are exclusions for either debt canceled in a Chapter 11 bankruptcy; or debt canceled for insolvency, meaning it is proven the tax payer's liabilities exceed their assets.

What Information is Included on a 1099-C Form?

1. Date debt was canceled.
2. Amount of canceled debt.
3. Amount of canceled debt attributable to principal only, reduced by any amount received by lender in satisfaction of debt.
4. Description of origin of debt (i.e., student loan, mortgage, or credit cards).

Conclusion

If you believe you qualify for one of these exceptions, fill out and submit Form 982 to the IRS. It is on this form that you will indicate why you qualify for an exclusion or exception.

Appendix 3
Rules for Debt Collectors

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Debt collectors have certain rules they must follow. If you are negotiating with them – or even if you are not – your position will be better if you have a working knowledge of these rules. In general, there are state rules regarding registration and conduct, and there is federal law, particularly the Fair Debt Collection Practices Act (FDCPA). Although these laws have been around for a long time and are well known, the debt collectors routinely violate many of them. If you catch them at it, you will significantly improve your negotiating position and, if it comes to it later, your litigation position. Therefore you should keep good records of all contact with debt collectors. Remember that the FDCPA has a statute of limitations of one year and that it regulates the conduct of debt collectors regardless of whether you owe the money or not.

Federal Fair Debt Collection Practices Act Rules

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The FDCPA prohibits the following conduct by a debt collector when attempting to collect a "consumer" debt (debt incurred for household or personal, rather than income-producing, purposes).

Prohibited Conduct

- **Hours for Phone Contact** - contacting consumers by telephone outside the hours of 8 a.m. to 9 p.m. local time, or at times known to the debt collector be inconvenient, is prohibited unless the consumer agrees.
- **Failure to Cease Communication Upon Request** - communicating with consumers in ANY way, other than to tell them that communications will cease and any consequences that may follow, after receiving *written* notice that said consumer wishes no further contact or refuses to pay the debt.

- **Engaging a Person in a Telephone Conversation Repeatedly or Continuously** with the intent to annoy, abuse, or harass any person at the number called.
- **Contacting a Person at Their Place of Employment** - after having been told this is not acceptable and prohibited by the employer.
- **Contacting a Consumer Known to be Represented by an Attorney**after having been told of that representation.
- **Attempting to Collect a Debt,** including**Communicating with Consumer** for that purpose, after the consumer has requested validation and before it has been provided.
- **Misrepresenting or Mischaracterizing the Debt** - using deception to collect the debt by claiming to be an attorney or a law enforcement officer, or claiming that the debt is for something other than it actually was.
- **Publishing Consumers Name or Address** - on a "bad debt" list or telling any third party about the debt - this is why envelopes from letters from debt collectors usually don't have the word "debt" on them. Information on a post card or envelope can constitute "publication."
- **Seeking Unjustified Amounts** - demanding amounts not explicitly authorized or permitted under contract or law (i.e., seeking attorney's fees or other collection fees unless your state law or the contract permits), or seeking more for either of these than is permitted.
- **Threatening Arrest or Legal Action not permitted or intended** - the threat to take any action that cannot legally be taken is prohibited. Likewise, the threat to take action that is unintended is also illegal.
- **Using Abusive or Profane Language.** The courts have been known to tolerate some of this if the consumer initiates it.
- **Contacting Third Parties** - revealing or discussing your debt with neighbors, co-workers, family members (other than spouse), friends, employers or any third person is strictly prohibited.
- **Reporting False Information on a Consumer's Credit Report** - or threatening to do so in the process of collection.

Required Conduct by a Collection Agency

The FDCPA also requires debt collectors to do certain things:

- **Identify Themselves and tell the Consumer** - in every communication, that the communication is from a debt collector, and that any information obtained will be used to effect collection of the debt. (This is called "the mini-Miranda warning.")
- **Give the Name and Address of Original Creditor** and **Notify the Consumer of Their Right to Dispute the Debt** This must be done in writing within 5 days of contacting the consumer by telephone or by first written communication.
- **Provide Verification of the Debt** - if a consumer sends a written request for verification within 30 days, then the debt collector must either mail the consumer the requested verification information or cease collection efforts *altogether*. Verification should include at a minimum the amount owed and the name and address of the original creditor. Remember too that collection efforts include much more than merely calling or writing the consumer and also include reporting the debt as unpaid or other actions designed to pressure the consumer to pay the debt.
- **File a Lawsuit only in a Proper Venue** - a debt collector may file a lawsuit only in the place where the consumer lives or signed the contract. Filing in an incorrect jurisdiction is a grounds for dismissal of the lawsuit (without prejudice) and ***also*** a violation of the FDCPA (grounds for a lawsuit or counterclaim against them).

Appendix 4
State Collection Agency Registration Requirements

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Most states require debt collectors to register with them in order to do business with people within their borders. As of the time of this writing, the states below have this requirement. You should look up the law for your own state and check with your attorney general to see if the collector bugging you is obeying this law. Somewhat incredibly, this law is also frequently ignored by the debt collectors, and this may be, and probably is, grounds to get a lawsuit dismissed and also be a violation of the FDCPA. It may also trigger regulatory enforcement action.

States Requiring Licensing, Registration, Exam, and/or Bond

TOC

Alaska, Arizona, Arkansas

Colorado, Connecticut

Delaware

Florida

Georgia

Hawaii,

Idaho, Illliois, Indiana, Iowa

Louisiana,

Maine, Maryland, Massachusetts, Michigan, Minnesota

Nebraska, Nevada, New Jersey, New Mexico, New York in some cities, North Carolina, North Dakota

Oregon

Puerto Rico

South Carolina (business license required)

Tennessee, Texas

Utah

Washington, West Virginia, Wisconsin, Wyoming

States Requiring License Tax

TOC

Alabama

No Bond or License Required

TOC

District Of Columbia

Kansas, Kentucky

Mississippi, Missouri, Montana

New Hampshire

Ohio, Oklahoma

Pennsylvania

Rhode Island

South Dakota

Vermont, Virginia

Again, you should check on the requirements for you state and, if they are not met by a debt collector contacting you, take appropriate action.

Appendix 5
Sample Negotiation Plan

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Here's a sample negotiating plan. This plan is simplified, but is for a person who is 45 years old and was employed for a while with a company that offered a 401(k) plan, but then got laid off and has been under-employed since then after a period of unemployment. Rents and has $650 per month after absolute "fixed" necessities – rent and car payments. Note this does not include other necessities like food, laundry, gas, utilities... This person may be "judgment proof" - not have enough money for a debt collector to be able to garnish anything, but believes that things are about to get better because has spent some time back in school and thinks can get a much better job. Not desperate. Could file for bankruptcy for $750.

Assets

Income ("disposable")	$650/month
Cash in Bank	$400
401(k)	$22,500 (as of 1/1/14)
Car	Ford Taurus – blue-book value $4,700 (owes $2,200 in future payments)
Furniture	Misc. plus one antique couch that cost $400 when bought [need to get appraised to consider for sale]
Books	1,000 books – total value maybe $2,000
Art Supplies	$250
Computer	cost $200 new
Washer/dryer	$400
Tools	$300

Mother has offered to give $1,000 to help out of debt.

Debts

Acct.	Balance	Principle	Fees	Minimum Pmt.	Owner (status)
St. John's Hosp	$4,214	3,856	358	N/A $150/mo*	St. J's – in collection
Dr. Jones	$1,980	1,675	305	N/A	Dr. J – in collection
MC -0332	$5,422	?	?	$275	MC (Orig. Cred) (int. 14.9%)
MC -7797	$11,517	?	?	N/A	CACH (2nd DC) (last payment on card 3 years ago)
Visa	$3,775	?	?	N/A	Portfolio (1st DC) (last payment on card 3 years ago)
Car	$2,200	2,200		165/mo	Ford (current)
Balance	27,128 ***			$440**	

* Has been paying medical bills whenever can, average $150.00/month. They are both with collection companies.

**Payments being made, but note that several accounts are not being paid regularly. Stopped making any payments on credit cards after debt sold to junk debt buyer. Prior to that payments had been sporadic.

*** Could file for bankruptcy – but hopes not to have to do so. It would cost $750 and be relatively easy to do. Does not want to, however, because unpaid debts are 3 years old (bad news stays on report for 7 years) and because hopes to negotiate some credit repair. CACH recently bought MC debt, and verification has been sought but not yet provided.

Needs to Achieve/Assets:

This situation looks pretty desperate. This person can make about $400 per month in payments – of which is already making $275.

First step

Apply for prepaid legal. This makes sense because some bills are going to have to be left unpaid for some time.

Active MC: ask for balance in terms of fees and interest owed.

Stop making payments to doctors and hospital. Instead, save money in bank.

Leave inactive credit cards (owned by debt buyers) unpaid.

Get credit report

Start looking for second job.

Second Step

Ask active MC for reduction in balance – to just the “principle” - slightly over $3,500 – and ask for no further interest or fees and a reduction of payments to $200/month. Ask for agreement that all negative credit references will be removed upon full payment and for credit line to be left intact.

Ignore collector calls. Do not send “cease communication” letter because you intend to negotiate and need the lines of communication open.

Work second job and save entire pay into bank account. (Let's say this adds $200/month)

After two months at this rate, bank account now at $1,200 (plus mom will help with $1,000)

Third Step

Ask debt buyers to accept 5% of debt in payment in full in exchange for full credit repair. (You're offering about $750, which you could pay in cash immediately). They reject but suggest you pay 60% ($9,175 in total).

You call the medical debt collectors and suggest a 20% payment in full in exchange for credit

repair. They suggest you pay it all – but they will eliminate the accrued interest and will accept payments of $150 until payment complete. No credit repair.

Fourth Step

Allow another month to pass. Now have $1,600.

You take a call from the medical debt collectors and suggest that you are considering bankruptcy but think you could pay them 20% in cash at the most – if they will repair your credit - (yes, you are just repeating your earlier offer). They simply reject the offer.

Take a call from the debt buyers and ask them to show proof of ownership of debt and whatever they have showing the debt is legit. Also write them a letter saying same thing.

Fifth Step

After another month, you have $2,000 in bank.

Tell the medical debt collectors you could consider paying perhaps 25%. When they tell you that there are more fees and interest due, you scoff - “If you can't come down, I'll have to declare bankruptcy – it would cost me $750 and leave you with basically nothing. I'm trying to work something out here, I need some cooperation!” They say they'll get back to you.

Sixth Step

One of the debt buyers files suit. It's covered by prepaid legal, and your lawyer files response. The other debt buyer sends you a couple of statements as supposed proof they own debt. You write back and demand more proof of what you owe.

Medical collectors call and say they could accept 75% in payments of $150/month, no fees. No credit repair.

Etc.

The medical bills will eventually settle, as will the debt buyers.

The ironic thing about the debt buyer filing suit is that it helps you. It happens this way because the debt buyers and their lawyers always assume they will win any suit they file (and they don't look carefully at the case before they file to see if that is true). When you fight back, you make a lawyer look

more closely at the suit, and they almost always decide it isn't worth pursuing. Filing suit, therefore, changes the decision-maker and lets you highlight the fact that they have no proof of the debt and could not make money. Thus the suits are usually dismissed with prejudice for nothing. Even if not, notice that the total due really does, in all likelihood, stop growing as soon as you start negotiating. This really is the way it works. As long as you keep saving the extra money you have stopped paying and the money from second job, you will soon be able to bring these debts under control for only a small fraction of what they were.

The medical bills are much more serious because they will have the proof they need to win if they file suit – but they still cannot do it very profitably. If the medical collectors file suit, it will extend your period of saving money by at least a year, during which time you will be able to save enough to pay almost the whole debt – and almost any lawyer would accept much less than that.

Once you take control of your situation, time is on your side if you stay disciplined, don't admit any debts, and save your money. Had this person had more debts, or debts less easily disposed of, bankruptcy might have been necessary – but this in itself, remember, is a powerful negotiating tool. This person did not have to pay hardball with the credit card companies because the debt on the active card was manageable. Doing it this way allowed or person to retain a credit line.

Appendix 6
Exemptions from Collection in Missouri (an example)

TOC

Collection is an extremely unpleasant thing, and you will want to avoid it if possible. That means not allowing anybody to get a judgment against you. We don't include this information here to help you avoid collection, however. This information should help you understand the *legal status* of your assets for purposes of your negotiation planning. Remember: you should think long and hard about giving a debt collector any protected assets (which all of these exemptions are), but that does not mean you should *never* do so. These exemptions are the exemptions provided under Missouri law (paraphrased - look up the law for exact statutory language), but different states have very different rules on some of these exemptions (most notably on homesteads). For an exact understanding of all the exemptions under your state's laws, we suggest you google the term "exemptions from levy" plus your state's name.

There are specific procedures you would follow in order to claim these exemptions if a levy (garnishment) occurred, but again, we include this information simply as a guide to understanding the legal character of your assets.

513.430 RSMo. 2010 et seq. provides the following exemptions:

1. Household furnishings and goods, clothes, appliances, books... held primarily for personal, family or household use of the debtor or a dependent, not to exceed $3,000 total.

2. A wedding ring worth not more than $1,500, plus other personal jewelry worth no more than $500 total.

3. Any property, of any kind, not to exceed $600 in value in total.

4. Implements, professional books or tools of the trade of the debtor or a dependent worth not more than $3,000.

5. Any motor vehicle worth not more than $3,000.

6. Any mobile home used as the principle residence but not on or attached to property owned by the debtor, worth no more than $5,000.

7. Any unmatured life insurance contracts.

8. Amount of any unaccrued divident or interest under, or loan value of, any one or more unmatured life insurance contracts.

9. Professionally prescribed health aids for debtor or dependents.

10. Right to receive social benefit, unemployment compensation, or a local public assistance benefit, veteran's benefits, disability, illness or unemployment benefits, or a stock bonus plan (etc.).

11. Right to receive money or property traceable to a payment on account of the wrongful death of an individual on whom the debtor was dependent (with some limitations).

12. A homestead consisting of a house and appurtenances and land worth not more than $15,000.

Appendix 7
Tracking Forms for Debt Collection

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Sample Form with Information

(note FDCPA violation)

Date	Company	Name of Caller	Phone #	What Said by both of us
1-2-14	DC Collectors	Jim Beam	123-456-789	Id'ed as debt collector, warned of possible recording; said I owed $1,980 for medical bills. Offered 20% discount for immediate pay when I asked. I said I wasn't sure the bill was mine and wanted verification. Said he'd send form.
1-4-14	DC	letter from JB		Statement of bill. I sent dispute seeking verification.
1-6-14	DC	Jim Beam		Asked if I'd "got statement." I said "yes" and that I had sought verification. He said it was a mistake and that I should just pay.
1-7-14	DC	Jim Beam		Said he was just "giving me another chance to "do the right thing."
1-8-14	DC	guy calling himself "Dos Equis"	same	Said he was Jim Beam's "supervisor" - had a special deal for me – just pay 60%. I asked if the company had received my request for verifiation. He said they had not. I repeated that I had sent a request.

Form

Date	Company	Name of Caller	Phone #	What Said by both of us

Appendix 8
Sample Settlement Proposals and Agreement

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Debt Settlement Letter(Sample Template)

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– to be sent certified mail, return receipt requested. Keep a copy of each letter you send, and when you make payment, also by certified mail, keep a copy of that, too.

.

Date

Your Name
Your Address
Your Phone #

Creditor's Name

Creditors Address
Creditors Phone Number

Re: Acct. #

To whom it May Concern:

This letter relates to my alleged debt to [creditor's name] and account #_____.
This letter is an attempt to resolve this debt.

Thank you for taking the time to assist me in this matter. I appreciate your working with me so that we can resolve it without having to resort to litigation or bankruptcy. I have previously described my financial hardship which prevents my offering a larger amount in settlement. I have many unsecured debts that I can no longer pay due to my hardship, but I sincerely desire to pay as much as possible and avoid the need for bankruptcy.

As of __[Date]____, I am in a position to offer $125.00 [amount you offer] to settle this debt (FIA Card Services, Account Number 1231112123233434, Balance $500). In exchange for this payment, as we have discussed, I require that my account will be reported "Paid in Full" and that you remove any late payments or charge offs on this account from my credit report once this settlement is paid.

Most of my other alleged creditors have already agreed to settlements very similar to this one. I have a limited amount of money, as I have discussed. There is unlikely to be money to make payments to creditors who do not reach a settlement agreement agreement with me, unfortunately.

If your company is willing to accept my offer, then please sign this letter agreeing to my proposal and return a copy to me. As soon as I receive this signed form, I can pay you by cashier's check or money order immediately.

Sincerely,

Name: _____

Date: _____

Negotiation Letter (Second Sample Template)

TOC

Name, address and date as above
Creditor name

Dear Creditor,

I am contacting you today regarding account number _____.

After a lengthy period of financial hardship, I am currently in a position to satisfy the debt referenced above. I would appreciate your cooperation in helping to resolve this alleged debt, as I am putting forth a sincere effort to settle my debts and pay them off.

I propose to pay _____ toward this debt as payment in full of the aforementioned debt. In return for this payment, and immediately upon its receipt, you will remove all late payment remarks or charge-offs from my credit bureau reports.

I am currently working cooperatively with several additional creditors for debt settlement purposes, and thus, my funds are severely limited. For this reason, I have chosen to settle those debts which can be satisfied through settlement proposals, such as I am proposing to you today. If this cannot be accomplished I will have to consider all other options available to me, but I would prefer to settle amicably rather than through litigation or bankruptcy.

If the above proposal is acceptable, I will pay the agreed upon balance in full. Please sign the bottom of this letter and send me a copy of the signed document. Upon receipt of the signed agreement, I will send you the agreed upon funds immediately.

Yours truly,

Consumer's Signature

Debt Settlement Agreement (Template)

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This Debt Settlement Agreement is entered into as of _____. The parties to this Agreement are as follows:

Debtor(s): _____, _____

Creditor: _____

The Creditor and Debtor(s) agree to the following terms and conditions:

1. The Creditor and Debtor agree that the exact amount of money due and owing, if any, is in dispute.

2. The Creditor and Debtor(s) agree that the current outstanding alleged debt is _____. All parties agree that the creditor will accept a payment of ____ in full settlement of this debt if such payment is made by __[date]_____.

3. All parties mutually agree to waive and release all claims they have or may have related to or regarding this account, whether such claims arise in tort or by contract law, or under any other statutory or common law whatsoever.

4. This Agreement shall bind the parties and all their successors and assigns.

5. Upon receipt of payment as agreed, and in exchange for the mutual exchange of releases and for other good and valuable consideration, Creditor agrees to accept such payment as payment in full, and to report such payment as payment in full to all credit reporting agencies. Creditor further agrees to remove all negative references and reports from Debtor's credit record related to the account.

6. The parties agree that the terms of this agreement are the result of negotiations between the parties and contain a full and final accord and satisfaction regarding all disputes between them.

7. Except to enforce the terms of this agreement, each party brings not to bring any claim of any kind against the other party to the agreement concerning any matter released by theis agreement. Each party further agrees that this agreement constitutes a bar to any such future claim.

8. The parties agree that the terms and conditions of this agreement shall be and remain confidential, and that no party shall release any part of this agreement other than to their accountants or legal counsel unless the agreement is subpoenaed and after notice of such subpoena to all affected parties.

9. All parties agree the other parties are fee of any liability or any wrongdoing. Any liability or wrongdoing is expressly denied, and this agreement constitutes a full compromise and waiver of all and any of such claims.

10. No modification to any provision contained in this agreement shall be binding upon any party unless made in writing and signed by all parties affected.

11. If any part of this agreement is held to be unenforceable for any reason, the remaining parts of the agreement shall remain in full force and effect.

12. Each party represents that he or she, or it, has not assigned any portion of the claims released under this agreement to any third party and is legally capable and empowered to settle all the claims addressed in this agreement.

13. Each party represents himself or herself or itself and has legal authority to enter intot his agreement on behalf of himself or herself, or his, her or its respective organization.

14. Upon receipt of valid funds for the agreed upon payment, all parties release each other from any further claim or liability.

15. [for agreements regarding debt buyers] The Creditor agrees that this debt is contested and disputed and additionally specifically agrees not to characterize this settlement as a loan "forgiveness" of any sort or to report it as such to any taxing authority or to issue a form 1099C regarding this debt.

16. [for agreement where suit has been filed] Upon receipt of payment, The Creditor agrees to dismiss its suit, Case No. 121212, filed on [date] against Debtor(s), with prejudice and to take all actions consistent with that.

_____ _____

Signature of Creditor or Agent for Creditor Date

_____ _____

Signature of Debtor Date

_____ _____

Signature of Debtor Date