

THE
SECRET WORLD
OF
DEBT COLLECTION



**Beat Collectors at Their Own Game—
A Former Collections Executive Reveals How**

MIKE CARDOZA, ESQ.

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CONTENTS

Author Biography	4
Introduction: What's in it for you?.....	6
Roadmap.....	9
Debt Collection 101	12
Junk Debt Buyers! Zombie Debt!	18
Who's Who in the Zoo?	21
The Law	26
The Economics of the Deal.....	33
Why Do You Pay?	41
Do's and Don'ts.....	48
How to Win.....	49
How NOT to Lose	55
Pre-Game Huddle.....	57
Free Audiobook CD.....	59

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Mike Cardoza is a former senior executive of a debt-buying company, a debt collection agency and a major regional high-volume debt collection law firm. He now brings his experience and skill to help consumers everywhere regain control of their financial lives by getting the upper hand on creditors and debt collectors.

Trained as a trial attorney in the U.S. Marine Corps, Mike Cardoza has tried numerous cases in federal and state courtrooms. He is a graduate of UCLA with a degree in Business Economics and also of the Georgetown University Law Center in Washington, DC. Mike is a veteran of the war in Iraq and continues to serve his country as an officer in the U.S. Marine Corps Reserve. Mike founded The Cardoza Law Corporation in order to share the truth about consumer credit and finance with clients and to be their “partner in prosperity.”

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INTRODUCTION

What's in it for you?

When I graduated from college, I joined the Marine Corps and went to law school. At one of my first postings, I was assigned to be a criminal trial attorney in the busiest district in the U.S. Department of Defense. It was a dream job for a single young litigator with a pent-up passion for legal battle. I spent just about all day, every day for years, on my feet in the courtroom slinging arguments, picking juries, making motions and losing some but winning most. I took pride in my craft but my greatest reward was in helping that person, the individual Marine or Sailor, through what they had at first thought was an impossible situation.

As the wars began and I was promoted, I went on to other things. I served the provisional government in Iraq in the early days of the insurgency just after the invasion. I was in key personnel management positions in the Marine Corps Headquarters and, ultimately, I became the General Counsel to a prominent three-star general and his entire command. These experiences taught me much about personal stress in times of crisis, the responsibilities and obligations that go with being a senior leader, and the calculations and compromises that are often required to successfully make far-reaching organizational decisions that will affect hundreds of thousands of people.

After my tours on active duty, I looked for opportunities to lead in the business world. Working for a year as an economic and governance consultant and author in Afghanistan and Pakistan taught me that the culture and values at the top of an organization have everything to do with how the majority of people in the rest of the pyramid experience life. I made a promise to myself that I would help as many people as I could to live lives of truth, empowerment and self-determination.

Over the next seven years, I became the CEO of a company that bought and collected delinquent consumer debt and I served as the senior operational and financial executive of a major U.S. multi-state debt collection law firm. These were businesses that had real people working for them and these people, like most people, wanted to treat other people nicely. Fortunately for business, as I found out, treating people nicely is entirely compatible with collecting on their debts. In fact, human kindness is one of the three fundamental reasons that people choose to pay a debt collector. The other two are: misplaced feelings of guilt or shame arising out of a misdirected sense of *moral obligation* that collectors vigorously encourage and exploit, and the fear that something bad, maybe even legally bad, will happen otherwise. I'll tell you later in this book why these three things really aren't as they seem to be.

During my time as a credit and collections executive I also learned that the business was so vast that managing any one individual account, should it become *complicated*, was almost impossible. The millions of accounts (and billions of dollars) flowing through the debt collection industry required businesses to devise systems and procedures for handling those accounts in bulk. You and I know that every individual is different, therefore, every consumer financial account is necessarily different. But these companies can't afford to have millions of *different*, so they've got to categorize and process them according to broad classifications.

What this means to each of us, who borrow on credit cards, car loans, mortgages, payday loans, and furniture and appliance installments, is that we are constantly being classified by our lenders, creditors, debt collectors and consumer reporting agencies. Who controls your classification? You do! You get to decide whether your loan is performing (maybe by making minimum payments), whether it is in collections, whether it becomes a default money judgment in a court of law (by

discarding notifications unopened and doing nothing), or whether it gets discharged altogether and your debt collector or creditor pays YOU for legal damages and pays your attorney's fee as well (by getting smart on your legal rights and taking action).

Lenders, consumer reporting agencies, and debt collectors aren't inherently bad. There are varying degrees of professionalism in every industry, and by no means does the credit, finance and collections industry have a monopoly on insensitive or oppressive behavior. Most often, these are good people trying to do a good job in an impossible situation. An impossible situation that, fortunately for them, is unknown to most of the people from whom they are trying to collect—until now.

I wrote this book for you because it seems to me that fundamental fairness requires that you get to find out what you're really up against when it comes to consumer credit, finance, reporting and collections. Is the “Wizard” really all-powerful or are there some mirrors and smoke being used? What would you end up knowing if someone took you on a guided tour behind the curtain? What would you do with that knowledge?

What would you end up knowing if someone took you on a guided tour behind the curtain? What would you do with that knowledge?

What you choose to do with this information is up to you, but I'm here with the experience of years of collecting and litigating to tell you all about it. I personally take great pride in my craft of fighting and winning consumer credit and finance cases, but my greatest reward is helping you through what you might be thinking is an impossible situation. Rest assured—it is not.

ROADMAP

In the chapters of this book, I'm going to tell you how the credit and collections industry really works, who the main players are and a lot about their motivations, fears and ultimate goals. This will help you understand just who exactly is coming from where, what they want, and how they relate to each other and, therefore, how they are likely to relate to you.

Then I'm going to talk about the law. Not specifically to torture you, but to help you understand just how it became to be so tilted in favor of you, the consumer borrower. I will talk about the laws that favor the creditors and collectors, but I'll also give examples of how those laws have certain Achilles' heels, loopholes and other weak spots.

The chapter on economics is going to blow your mind. You think you know right now who has the economic power in the lender/borrower relationship, but you don't. Have you heard the story of the jovial cigar-smoking borrower who goes to meet his banker about defaulting on a loan? On the way to the bank, he tells his friend, "When you owe the bank \$30,000 and can't pay, you've got a problem. When you owe the bank \$3 million and you can't pay, the BANK has a problem!" Well, it's like that, only more so. I'll tell you how the real-world economics of credit and collections result in disproportionately favorable outcomes for consumer borrowers who use all of the tools at their disposal.

The real-world economics of credit and collections result in disproportionately favorable outcomes for consumer borrowers who use all of the tools at their disposal.

After those discussions about the objective legal and economic realities of the consumer creditor/debtor relationship, I'm going to ask you to look inside of you. Don't freak out. We're not going to completely unpack your emotional issues about money, but it will definitely help if you're willing to explore those things on your own. Instead, we're going to take a look at why most people pay creditors and collectors when they absolutely don't have to. I promise that you will remain completely in charge of the decision about whether you should or shouldn't and about whether you will or won't ultimately pay. I'm just going to help you to understand whether you actually have to pay or not.

The next part is the to-do list. These will be specific affirmative steps that will easily put your understanding into action. Warning: If you skip to this section now, it will read in English, but it may not make any sense to your current understanding of the credit and collections battlefield. This was perhaps described best in about 500 B.C.: "If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle." Sun Tzu, *The Art of War*. Following the "how to win" section, will be a "how not to lose" section. Make sure both sections make sense to you before you put them to use.

At the conclusion of this book, I want you to understand how powerful consumer protection laws are when wielded appropriately. I want you to trust that years of legislation and litigation, and millions of dollars in damages and attorney's fees awarded are proof that these tools are safe, useful, effective

and fair. I want you to know what millions of Americans don't know because the financial industry exerts huge effort to make you think otherwise. I want you to have the power and the choice to wield this truth in any way you see fit, for your own prosperity and well-being, and for the benefit of your friends, your community and your family.

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DEBT COLLECTION 101

America is a credit driven economy. Consumer credit in America today totals about \$3,298 billion. The actual American hard currency supply – money that you can actually touch and feel, plus the electrons in checking accounts in banks everywhere – is about \$2,973 billion. This means that for every one dollar bill in circulation, there's about \$1.11 in consumer debt on the books somewhere at any one time. The total outstanding amount of revolving consumer credit (like credit cards) is about \$882 billion, the average delinquent credit card account balance is about \$1,800 and the average overall rate of delinquency of revolving consumer credit at commercial banks (which doesn't include debt that has been sold to debt-buyers) is about 3.5%. That means there're more than roughly 17 million accounts worth over \$30 billion being collected at any one time.

When you think about credit and collections, you've got to think in bulk. You've got to think about masses and masses of accounts and how you would create rules to deal with them all. This is the key to your necessary understanding of the systemic nature of credit and collections. A stack of \$100 bills – just 100 billion of them – reaches 28 times higher than the orbit of the International Space Station around the Earth. What if there were accidentally some \$10 bills mixed in?! How would you find them and get them out? Could you even try? “Pastry chef! Remove the sugar from these cupcakes immediately!”

When you think about credit and collections, you've got to think in bulk. You've got to think about masses and masses of accounts and how you would create rules to deal with them all.

When Carl Sagan tells us without a doubt that we're not the only life in the universe because there just are just too many galaxies in the universe with too many different combinations of a finite number of known atoms to make our solitude a mathematical impossibility (did you follow that barely?), then, of course, some "other" Robert Maxwell's credit information is illegally present on your credit report! Of course, you've gotten collection notices and demands for supposedly the same account that have different balances due (and are, therefore, illegally misrepresentative of the true balance) – it just mathematically has to be that way. We'll talk more later about how the other practical realities of the credit and collections industry guarantee that there will be errors like these and more.

The practical realities of the credit and collections industry guarantee that there will be illegal errors.

Who is collecting what: It used to be that people would get credit on a little paper ledger from the grocer down the street. Then along came the credit card in the latter part of the 20th century. The credit card accounts are underwritten by large financial institutions that charge you money for the card every year, charge the merchant each time to accept payment by the card, charge you again monthly for maintaining a revolving balance on the card, and perhaps charge you a few more fees for exceeding your credit limit, or paying late, or what have you. Credit card payments have gobbled up nearly every consumer credit opportunity in America (you can buy a small bag of French fries with your credit card) and the average account balances are relatively low. Therefore, the vast majority of debt collections are for delinquent credit card bills. The other categories include automobile loans, student loans, mortgage loans, bills for medical services, and payday or other unsecured cash loans.

Collections are taking place 24/7 from basements and cube-farms in places like India, Arizona and Mexico to the mailboxes, email addresses, employers, aunts, cousins, neighbors and even text message in-boxes of borrowers all over the world. Why? You say, “It’s about the money – duh.” You’re right and that’s the simple answer. The subtle nuance to this is that while the collections of delinquent (late) accounts in absolute figures are a large sum of money, they are, compared to the overall revenue of the company collecting them (the total amount of money coming in from business operations in a year), teeny-tiny. So, when a company says that it collects on delinquent debt “in order to keep prices low for everyone,” it’s true. But only so far as 1) collections boost a company’s profit and 2) that debt collections deter regularly paying customers from becoming delinquent themselves. We will see more how this dynamic becomes important to you in the section later on economics.

The simple model for how debts get collected is that a bank, hospital, cell phone provider or a credit card company makes calls to its recently delinquent account holders to see what’s up. If that call fails to bring the account current, the creditor hires a collection agency to send a bunch of letters and make phone calls, and in return, that agency gets to keep a percentage of the debts it collects as its fee. (Yes, the credit card issuer did “write off” the delinquent credit card account before it was assigned to a collection agency, but that’s required by the federal banking regulations and has no impact on the issuer’s ability to collect on that delinquent account.) This is called a “contingent fee” arrangement. If the collection agency collects no money, it gets no fee. You can see then that the agency is financially motivated to collect as much as possible as rapidly as possible

on the delinquent accounts that have been assigned or “placed” with the agency. It also has the financial incentive to do those things in the least expensive way possible.

The collection agency is financially motivated to collect as much as possible as rapidly as possible. It also has the financial incentive to do those things in the least expensive way possible.

If you're the agency, there are roughly two approaches you can take to making money: penetration and volume. Penetration refers to how hard you squeeze each account for the maximum amount of money from each borrower or debtor, and volume refers to how many accounts you're getting placed with your firm and moved through your collection processes on a monthly basis. The agency owner seeks to strike a balance between the two. She doesn't want to “leave meat on the bone” by failing to work each account hard enough, but neither does she want to waste time (wages) having the staff climb to the top of each ladder when they could get fuller buckets faster by picking just the low hanging fruit.

At the top of those ladders are the monies that are hard to get. They're divided into roughly two categories, the “can't pays” and the “won't pays.” The trouble for creditors, however, is that they don't know who is which. All they know is that there's money up there and they want to get at it, so, they do their best to guess which accounts belong to which of those two categories and then treat those categories appropriately. The “can't pays” go into long-term recycle where constant contact is maintained in order to recognize a change in

financial conditions that will turn them into a “can pay.” The “won’t pay” – those deemed to probably have sufficient assets either now or in the future – often go to the debt collection lawyers.

“Your account is being referred to legal.” Does that strike fear in your heart? It’s supposed to. It probably shouldn’t – but more on that later. The debt collection law firm is just that – a law firm dedicated to the endeavor of collecting on these very same debts using the legal process. While it is true that a lawsuit on a delinquent bill can be turned into a court judgment against the debtor that can then be used to involuntarily seize (or “garnish”) that debtor’s wages directly from the pocket of his employer (!), the big prayer for the creditor is that it doesn’t. Why? Because that’s the long way around the world, and it’s very, very expensive. Think of all of the staff time to prepare the lawsuit, to file it with the court, to have it adequately served on the defendant/debtor, to calendar the matter, ensure that an attorney appears in court, pay the attorney, receive and docket the judgment, etc. And that process I just described takes at least 18 months!

Creditors who place accounts with a collection law firm are betting that once that first demand letter with the little scales of justice and the law firm name with the “&” in it comes in the mail, the “won’t pay” debtor will convert to a “will pay” debtor and some kind of negotiated settlement or payment plan will be worked out rapidly. Because they work on a contingent fee basis, just like the collection agency described above, the collection law firm makes its money on those defendants who roll over immediately and it maybe breaks even, or worse, on those that don’t. If you’re

the collection attorney, however, you've got to make good on your promise to sue at least the majority of these people because if you don't, you're committing a fraud (so say the courts) by threatening to sue when you're not actually going to do it. Therefore, you've got to take them all to the hoop - but really, how financially motivated are you going to be to spend the additional money to fight the few that are the really tough ones?

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JUNK DEBT BUYERS! ZOMBIE DEBT!

Here's an interesting twist on collections - let's check it out. Private property is a sacred right in America. That's largely because Puritan subjects of the English Crown brought that (relatively new) tradition over to the American colonies and enshrined it in the U.S. Constitution. Part of what makes my property my property, legally, is my right to sell or give it away. I can sell my car, my shoes, the space on my barn door for advertising, my country club membership, my future lottery winnings pay-outs for a lump sum today, and the rights to any money that anyone else owes me! Think about that.

Time is money. Banks know that, payday lenders know that and you know that. Would you rather I give you \$1 now or \$1.02 a year from now? What are all those things you could have done with that dollar in 12 months besides wait for it to turn into \$1.02? What's the cost of that opportunity you missed to buy 5 newspapers for that \$1 and resell them for 25 cents apiece? Yes, it's exactly that - it's the opportunity cost of not taking that \$1 right now (I came up with about 23 cents). So, creditors are likewise faced with a choice: Spend a whole bunch of time, and money, to collect on these accounts - maybe they'll get an aggregate of 14 to 18 cents on the dollar after expenses - or, sell them all right now for 10 cents on the dollar. Not surprisingly, many choose to sell.

The equation is reversed for the debt buyer. He spends 10 cents on the dollar now for the rights to collect 100 cents on the dollar, plus interest, forever into the future (pretty much). To him, it's worth it to put in some time and money to get maybe

24 to 32 cents on the dollar out of the lower hanging fruit in that set of accounts (called a “portfolio”) and then what? Well, he owns the accounts now so he could ... sell them! Did you see that coming? And so on and so on and so forth. This is why, perhaps, eleven different companies have called you within the past three years about the same \$327 unpaid cell phone bill. Problems arise when the financial data is corrupted during the collections and onward sale processes because supporting documents and contracts (and/or the ability to retrieve them) become lost, portfolios get stolen by others who collect on them concurrently, settlements aren’t recorded as such and the balance is sold onward instead of being extinguished, and more.

Problems arise when the financial data is corrupted during the collections and onward sale processes because supporting documents and contracts become lost.

Don’t think that debt buying isn’t legitimate – it is. Some of the larger firms in the American financial landscape are publicly traded multi-million dollar companies that exclusively buy and collect on the debts generated by other creditors. They make serious money and they’re serious about doing it right. Do not underestimate them. That said, while legally they may “stand in the shoes of” the original creditor and may be entitled to all things that the original creditor was entitled to, their distance from the original creditor creates some hard-to-spot but significant problems for them when it comes to enforcing and collecting on the account.

By now you're getting the picture that creditors and collectors want to get the biggest bang for their buck out of their delinquent debt portfolios. It isn't personal - how could it be with millions of accounts whizzing around as invisible electrons to and fro - it's just business. They're trying to solve the puzzle of how to make the greatest quantity of minimally palatable lemonade out of the least amount of sugar. Period.

WHO'S WHO IN THE ZOO?

Let's now take a look at the individual actors in the process and what drives them. As you think about them, think about them as people. People with kids, people with bills, people with hopes, people like your neighbor, people with bosses and stress and a job to do. Because they are. When you do this, you will begin to understand the reaches of your enormous power in the creditor/debtor relationship. You will begin to see credit and collections as a system, which, like any system, has its inherent strengths and weaknesses. You can choose to use these newly-found tools to your tactical advantage or you can bash your face against the wall. These players are just executing their roles within the system. Yes, the situation may aggravate you beyond words, but these people are not out to get you. In fact, the better ones are just trying to be your friend because they know that sometimes you just need an ear who will hear out your frustrations, and that you tend to pay friends first.

Begin to see credit and collections as a system, which, like any system, has its inherent strengths and weaknesses.

Collectors: The front line troops. Where rubber meets road. These people, may God bless them all, hold chins high every day they walk into their industrial grey cubicle farm in Burbank, Buffalo or Bombay. They put their lunch bags in the fridge, don their cheap black headsets caked in

makeup and fast food grease, look at the dangling little shiny cardboard green dollar signs that hang from the fluorescent fixtures overhead and think “Today, I will make it. I will make my goal so I can get my bonus so I can pay my kid’s daycare, and please, please, don’t let any of these ‘customers’ I’m trying to be phone-friends with complain to my boss about me screwing with them – so help me God.”

One highly placed collection executive I knew referred to collectors generally as “human countersuit generators” because “every time they open their mouths, they have to get every word exactly right because you just never know who is on the other end of the line listening – or recording – and if they’re going to sue us!” Also known as “account managers” or “account reps,” these people are actually your best friend because they weave the rope that often gets their collection agency hung out to dry at the end of your pole. Where it suits your purposes tactically to antagonize or provoke them, go for it – but just to the extent necessary, and don’t be mean.

Managers: Managers cat-wrangle collectors who are about to quit, collectors who know that they are better than every single other living human being in the building, and they deal with little else in between. The manager never has enough time in the day or money collected at the end of the month, but always has too many compliance violations, clients demanding some kind of bizarre data compilation and headaches from upper management who want to try a “new way” of doing things this month to see if it “makes a difference.” The manager has little patience for your run-of-the-mill problems, but is experienced enough to smell when something’s going sideways on an account and needs to be

reeled back in before it gets out of control. Get a manager involved in your account because it will do things for you that I will explain later in the “How to win” section of this book.

Get a manager involved in your account because it will do things for you that I will explain later in the “How to win” section of this book.

IT Managers: What?! Yes, without a doubt. You see, your account isn't on any paper pages in any folder on anyone's desk, anywhere. It's only a little mini-tornado of data that's shooting around from database to database in the original creditor's server until it gets shot out with tens of thousands of other little mini-tornados into a pipe down to the agency or law firm's servers where it's translated by a program into a different shaped tornado with different attributes that's then piped to each of the operator workstations for what everyone fantastically hopes will be error-free human processing. Then, every day or every week or so, it gets retranslated and blasted back up through that pipe where it's reconciled with the original mini-tornado back on the original creditor's (or whoever is the client of the agency or firm) server and then a massive report gets churned out that hopefully someone reads and uses to fix all the errors that may have occurred along that complex journey. Every account, every penny, every debtor, every day. And that's the simplified description - of when things go right. There is no more critical function in today's modern credit and collections operation than IT.

Lawyers: A debt collection law firm is just like a debt collection agency, except in addition to calling and sending letters, they sue. They sue a lot. Thousands of cases every week – so many that the traditional law firm system can hardly keep up with them all. So many, in fact, a collection lawyer may spend somewhere between zero and five seconds reviewing a case before filing. Often that number is really close to zero. There are two kinds of lawyer at a debt collection law firm, the one who goes to all of the courts all day every day, and the one who works back at the office to hopefully prevent any massive systemic violations of the collections and consumer reporting laws from being committed by the operational staff. The court-warrior knows everybody from the judge to the bailiff and walks about as if she owns the place. She has, however, only about three plays in her playbook, one of which is to fold the cards if it looks like you're going to put up a fight. Don't be intimidated. The other lawyer is at the office shoveling sand back into the sea. All day, the dozens of collectors, clerks and paralegals who make up the collection law practice are doing things slightly differently. The phone collector goes off-script in an absent-minded moment, the paralegal forgets to include a page in the legal pleadings and the clerk enters the wrong address for the process server to deliver the summons. Try as he might to ensure that there are zero violations of the collections and consumer reporting laws in the firm's operations, it just can't quite ever be done.

A collection lawyer may spend somewhere between zero and five seconds reviewing a case before filing. Often that number is really close to zero.

Judges: The judges see these collection lawsuits all the time. In fact, their courtrooms are overwhelmed by them. There are so many that in some places, the collection cases are heard on their own separate day. Very few defendants ever show up to court. Those who do show rarely exercise their right to have the debt against them proven by the collection lawyer. All of this makes the judge irritated and uneasy. Irritated because they feel like they are being used as pawns by the collection industry, and uneasy because they (correctly) suspect that most of these cases could never be legally proven but they're forced to enter legal judgment against the absent defendant or the one who rolls over in court. Secretly, the judge is dying to see you fight this one out - for once.

Secretly, the judge is dying to see you fight this one out - for once.

The Business Owners: I've saved the most important actors for you to understand until the end. Whether it's the owners of the collection agency, or the collection law firm, or of the original creditor, the business owners don't have anything against you personally. To them, it's all just business. It's just money. It's just numbers and percentages and spreadsheets and flow charts. You aren't even a name. They aren't interested in "wasting" money trying to climb all the way to the top of the tree to shake out that one apple who fights back and won't pay. That would be bad business. Sure, they'll threaten you with the hammer at first - because that doesn't cost a lot - but in this business, the nail that sticks out actually gets avoided completely. You know from reading my biography how I know - trust me on this.

THE LAW

“But what about the law?!” you ask. “Aren’t you an attorney?!” Yes, the law has something to do with all of this so let’s discuss it. I’m going to give you a meaningful overall summary of the legal situation, but then I’m going to drill-down a little bit into the laws that generally favor creditors and collectors and then those that generally favor you. Don’t worry if you find yourself glazing over – lawyers go to years of school and read massive books so the rest of humanity doesn’t have to. It IS actually super-complicated and anyone who tells you it’s not isn’t really being fair about the situation.

First, the bottom line up front: Creditors and collectors have legal tools to get money from debtors who don’t want to pay, but those tools are expensive, time-consuming, relatively easy to defeat and dangerous to the user because they make the creditors and collectors vulnerable to countersuit by the defendant consumer. Consumers (you) have super-powerful legal tools that completely shift the balance of power in a great many circumstances and which can make your alleged debt go away, pay your lawyer fees and even get you paid money for your troubles!

Consumers (you) have super-powerful legal tools that completely shift the balance of power in a great many circumstances and which can make your alleged debt go away, pay your lawyer fees and even get you paid money for your troubles!

Creditors first use the laws of contracts to try to have their way. They put pages and pages of obligations and rules into things like a credit card user agreement (also called “Terms and Conditions”) and then hold you to those rules by saying that you agreed to them when you began to use the card. Perhaps you recognize some of the obvious ones like how paying late gets you charged an additional \$29 fee. Some are more subtle, like how the unpaid balance at the end of each month – a balance that may include some finance charge if you made only the minimum payment – becomes principle the following month. That balance then has a finance charge applied to it in that following month. In this scenario, which is not uncommon, you’re, therefore, essentially paying interest upon interest – except that you’re not because you “agreed” to that particular formulation in the credit card agreement. I have seen hundreds of these tricks in consumer lending agreements – most (like the one above) are legal, some are not. The “Terms and Conditions,” by the way and for example, are 30-plus page documents that get amended by the underwriting bank sometimes more than twice per year. Which “Terms and Conditions” actually applies to the account you stopped paying on 14 months ago? Nobody really knows for sure. Really.

Collectors are dying to threaten you with “referring” your account “to legal.” This is because they know statistically that this causes people to pay. Why? Nobody knows for sure, but it’s probably because “legal” sounds complicated and unfamiliar and vaguely unpleasant to the recipient of such a threat or promise. Creditors can sue you in the hopes that they’ll win at court (usually because the defendant doesn’t ever show up) and get what’s called a “judgment” and then use that to perform a “garnishment” and seize a portion of your wages directly from your employer or bank account. But hold on – it’s not that easy

for them (unless you let it be). Know this: The lender does not get to decide how much you owe. Only the court can do that, and only after both sides of the case have been heard in accordance with the procedural rules and substantive law on the issue.

The lender does not get to decide how much you owe. Only the court can do that.

You know how in America a person accused of something isn't guilty of any crime unless a court of law says she is? It's exactly the same way with financial matters – you just don't owe the money until either you or the court says that you do. Think about that for a minute.

Creditors bear the “burden of proof” when it comes to getting a legal judgment for money. This burden requires evidence, things like documents and records and testimony from a real live person who actually knows what they're talking about when it comes to your specific account. Remember how I told you about the millions of accounts and records whizzing around and how your particular case isn't personal for them? Guess how difficult it is for a creditor to prove a debt in court when the defendant puts them to the test or “fights it out.” It's very difficult and often impossible. And they know that.

Creditors bear the “burden of proof” when it comes to getting a legal judgment for money. This burden requires evidence, things like documents and records and testimony from a real live person who actually knows what they're talking about when it comes to your specific account.

Nothing is automatic for the creditor when it comes to “legal.” Every “i” must be dotted just so, and every “t” crossed. Again and again. A garnishment, for example, is a whole new lawsuit based on the judgment previously obtained. All of the rules (and fees) for filing and proving a lawsuit have to be followed all over again by the creditor. Every time they do this, they risk getting it wrong. Sometimes in a small way, and sometimes in a large way, but the difference to you is very slight because any legally significant error by the creditor is catastrophic to them – if you capitalize on it. Let’s take a look at how that happens.

Back in the day, which is prior to about 1977 for the purpose of this discussion, creditors and collectors could pretty much do about whatever they wanted in order to collect. And they did. America had enough of this embarrassing, ridiculous and unfair behavior and passed a federal law – covering the entire nation – called the Fair Debt Collection Practices Act (FDCPA) in 1977. Now, like most laws, it was a product of haggling and compromise but what emerged was relatively short, straightforward and powerful.

The FDCPA is only a few pages long and it spells out exactly what debt collectors have to do and what they can’t do. Most significantly, it provides for a “private right of action,” “strict liability” and “shifting of fees.” This is important legalese, so let me unpack these terms for you. A private right of action is where a law says that something’s illegal and that you, the private citizen who has been affected by the illegal behavior, gets to sue for it. Strict liability means that there isn’t ever going to be any discussion about whether or not the person who did something wrong actually meant to do it or not. It just doesn’t legally matter. If it was done, and they did it, then they are liable. Period.

Shifting fees means that the law provides that as a successful plaintiff, your attorney will be paid their fees by the defendant, which is the company that you sued. What that means to you is that a Consumer Credit & Finance attorney will most often take your case, if it's a good one in their opinion, without you having to pay anything at all. All you have to do is participate and provide the evidence. The FDCPA says all kinds of specific things like collectors can't call after 8 pm, they can't say or write anything that's misleading, they have to provide specific notice of your rights to request validation of the debt, they have to inform you each and every time that they are debt collectors AND that they are seeking to collect a debt. Do you see how this collection of seemingly simple requirements could gradually get very complicated when they are combined together in the process of trying to collect a debt?

A Consumer Credit & Finance attorney will most often take your case, if it's a good one in their opinion, without you having to pay anything at all. All you have to do is participate and provide the evidence.

Add on top of this, the case law. Case law is the entire body of court opinions that have taken decisions on previous cases involving the same or similar circumstances and which have rendered opinions about what the law means and how it should work. These decisions can't be ignored! They, together with the actual FDCPA control who wins or loses in a legal fight over alleged violations. So, for example, the state of the law today is that a collector can't both tell you that you have 30 days in which to dispute the validity of the debt and at the same time demand payment on it. Why? Because courts have held that the demand "overshadows" the 30 day validation period! Does this

make intuitive sense to you? No, it probably doesn't. This and hundreds of other circumstantial combinations are the legal minefield for creditors and collectors but only IF they're facing a consumer who knows something about how the process works or has retained an attorney who does.

I've told you a little bit about the FDCPA and the basic features of that law, the strict liability, the shifting fees and the somewhat byzantine applications of the law in the real world. Those things are hallmarks of some other laws in this area that give savvy consumers great power and leverage over their creditors. The Fair Credit Reporting Act (FCRA) governs everything that the consumer reporting agencies (think Equifax, TransUnion and Experian) have to do to protect the accuracy of your credit report data, and the FCRA governs everything that providers of your credit information (called "furnishers") to those consumer reporting agencies have to do as well as the things that they can't do. Here's a short quiz: You've paid off a debt, but it keeps appearing on your credit report. You even sent Equifax a letter proving that you paid it off. Still nothing. Do you have to fume about having an unfairly poor credit report or can you get an attorney free of charge to file lawsuits to get it fixed and possibly even recover a cash award for punitive damages? No, you don't, and yes, you can.

And there are others. The Truth In Lending Act (TILA) governs exactly what disclosures must be made to borrowers, the Telephone Consumer Privacy Act (TCPA) currently prohibits "robo-dialing" of your cell phone for marketing or debt collection purposes, the Equal Credit Opportunity Act (ECOA) prohibits certain types of discrimination in the extension of credit by prohibiting certain questions of borrowers and requiring certain specific notices, the Real Estate Settlement Procedures Act (RESPA) requires that certain notices be given

to mortgage borrowers and prohibits the splitting of fees other than for services actually performed. These are just examples of the many little-known consumer protection statutes that you may be able to wield to great effect.

By now, you've probably formed your own opinion about which side the law favors. My opinion, from working both sides of the courtroom, is that the laws - with the help of a good attorney - favor you, the consumer. Why? Because Congress and the various agencies and legislators wanted to give the people something to fight back with in the hopes that corporate behavior would ultimately change for the better - for everyone. In the hope that if enough consumers would file and win enough lawsuits, that the late-night harassing collection calls, and the incessant cell-phone robo-dialers, and the screwed up FICO scores would all end for everyone everywhere in America. It hasn't quite worked out that way yet, and in the next chapter I'll tell you why.

My opinion, from working both sides of the courtroom, is that the laws - with the help of a good attorney - favor you, the consumer.

THE ECONOMICS OF THE DEAL

This will be a fun chapter. No graphs, no hard math, and no guns and/or butter. The economics of the deal all boil down to this: It's all about the money. And that, to a very great extent, is OK.

It's all about the money. And that, to a very great extent, is OK.

We're a capitalist society that seeks to arrange financial incentives for the good of all. This is so that you don't need to know how to start a fire, or weave a shirt, or build a car, or fix your cell phone. In fact, you don't even have to know how your cell phone works! Where does what you flush down the toilet go? What happens to it? Who cares? That business, however, feeds someone's family yesterday, today and tomorrow – I guarantee it.

You already know from earlier sections of this book about how there's a blizzard of millions of accounts and dollars owed out there in the credit and collections space. You're starting to get how this industry necessarily has to think of things in terms of generalities and systems – that any one particular account doesn't really matter, because it can't. It has to be all about broad categorization and classification of types of accounts based on their common attributes and then the subsequent assignment of those account types to appropriate workflows, and then the appropriate recategorization and reassignment of each of those

accounts to follow-on workflows depending on how their attributes change over time or due to events.

Let's say there's a major bank, we'll call it CityCapital Bank. You've gotten mail from this bank, perhaps a half dozen letters a year – whether you're an account holder or not. It seems, with the exception of the years 2009 to 2013 when you must have had leprosy along with the rest of us, that CityCapital badly wants you to carry its credit card in your wallet and buy french fries and movie tickets and groceries with it, all the time. While somewhat regulated by the federal government and facing price competition from its competitors, the bank has a healthy herd of card holders and makes about \$50 billion per year before expenses and taxes and all the rest. Some of the card holders pay their balance off in full each month, but many do not. Those who carry a balance on their card pay fees and interest that are not insignificant (24% per year in an economy where a mortgage rate is 4% is very, very healthy). And they, in effect, pay interest upon interest as discussed in the earlier chapter on laws that favor creditors. Both types of cardholders, however, make money for CityCapital every single time they use the card by way of merchant fees. Your donut shop guy has to pay between 2.5% and 4% of the sale price every time you swipe your card for a glazed cruller. That fee goes to pay 3 to 5 middlemen, but a good chunk of it goes to CityCapital. You see, the more you spend, the more they make.

Let's talk about CityCapital's delinquent accounts. By that I mean those accounts that have fallen so far behind in payments that they are being sent to collections and have had no payments in the previous 180 days. Here's another short quiz: You're the manager of a retail lending bank. It's the end of the year and time to trim personnel. One of your loan officers has to go and you're going to decide which. Loan officer A has done solid

work all year, has done a decent volume of underwriting and has a perfect record – no defaults! Loan officer B has done solid work all year, has also done a decent volume of underwriting, perhaps a shade more than Loan officer A, but has had some of her loans go bad and become delinquent and uncollectable. Whom do you let go?

Delinquencies are essential to a competitive lending business because they show where the bottom of the market pool is. If all you do is tread water and your feet don't touch, you don't know whether that pool is 7 feet deep or 70 feet deep. You don't know how much deeper you can dive before you hit that bottom. In other words, you don't know how many more customers you can extend credit to (and, thereby, make more profits and take more customers away from your competition) before you max out the profitable population of potential customers. (Another factor is that although all customers of a particular rating appear uniformly creditworthy, you don't actually know which ones will default and which ones won't). Is this making sense? I'd fire Loan officer A. How about you?

So, with assumption that delinquencies are a necessary component of a deeply penetrating consumer credit marketing campaign, how many are there and what is CityCapital to do with them? If you had a beach cottage that your grandmother left to you and your family rented it out every summer to guests for \$10,000, think about how you'd feel about trying to go after that renter who totally stiffed you and trashed the place last year! That feeling is exactly how CityCapital does NOT feel about its defaulted accounts. Let's imagine that at any one time, CityCapital has about \$500 million in delinquent consumer debt. At an average balance of about \$1,800 for a credit card account, that's about 278,000 accounts. Wow! It seems like that's a lot of money! I think that's what the CityCapital investors must

be thinking. And I think that's what the CityCapital corporate officers, who work essentially for the investors, must be thinking that the investors are thinking. We can't just let that money go! What will it mean for all of the paying account holders if they find out that CityCapital doesn't ever make anybody pay?!

Here's what's really happening. First, the basic math: \$500 million in delinquent consumer debt is about exactly one percent (1%) of one year's gross revenue for the bank. That's teeny tiny. And it's not like all that bad debt happened in one year, it's been accumulating every year. Some new accounts are added and some old accounts are paid off. Plus, people are paying on these delinquent accounts as a result of a systematic method of collections that uses letters, phone calls, credit reporting and debt collection law firms, where necessary.

So what about this other 99% of the business? Where does all that good money come from? It comes from people like you and me thinking that CityCapital is a fine bank with a fine credit card offer and a fine reputation for prompt, courteous and fair customer service. In a marketplace where you get these offers in the mail every day, what one thing makes up your mind to charge a small bag of fries on the CityCapital card? You laugh – but don't. Retail banking products are so homogenous (largely by way of federal regulation) that in order to compete, these banks have to differentiate in areas like “goodwill.” Doesn't every banker tell you that “we're a ‘relationship’ bank?” What does that mean? Well, it means a lot to them! It means that they can't afford to do things to piss people off unnecessarily or to look bad in the eyes of the public. What looks bad? Here's a short and non-exhaustive list of actual things: systematically mis-reporting credit data, losing customer data, facing lawsuits for violating federal collection and consumer reporting laws, losing a lawsuit in court for the same, trying to collect debts from the dead,

disabled, or infirm, collecting on the same debt twice, hiring a collection agency that uses harassing phone calls, collecting on an expired debt, threatening to sue but then not doing it.

Banks can't afford to do things to piss people off unnecessarily or to look bad in the eyes of the public.

Can you see now how CityCapital's efforts to collect on the measly 1% of annual income that's past due might end up significantly impairing the next year's 99% of revenue? That's the way they see it, too. So, CityCapital collects delinquent consumer debt in order to get the low hanging money from people who want to pay anyway (because many, if not most, do for reasons we will discuss later) to satisfy investors who would think them insane for not getting every penny possible for the bottom line, and to provide a negative deterrent to the other 99% so that they continue to pay their bills on time and keep the whole machine running as it's supposed to.

Banks collect delinquent consumer debt in order to get the low hanging money from people who want to pay anyway.

What do you think CityCapital does with the individual delinquent account that looks like it's going to go sideways - into the "looks bad" category? The one where it looks like maybe they're accused of mis-reporting credit data, violating federal collection and consumer reporting laws, collecting on the same debt twice, hiring a collection agency who uses harassing phone calls, collecting on an expired debt, or threatening to sue

but then not doing it? Do you think that CityCapital and its collection agencies are inclined to dig in their heels to fight (and probably lose) the case of Robert Maxwell 0002220045467342 in federal court as a matter of principle? No. They're not, and they don't because that would be irrational and just plain bad business.

Now you're thinking, "If I was in charge of a bank, or a doctor's office, or an auto finance company, I would just do these things the right way!" I mean, how hard can it be? The rules are right there in the FDCPA and the other statutes and the case law decisions have all been published, and I'll hire an in-house compliance lawyer to make sure the process gets put together in a copasetic manner and stays that way." "Oh, these banks!" You shake your fist. I have personally walked in your shoes, my friend, and let me tell you what I found. Have you ever squeezed a water balloon? Have you ever played "Whack-a-Mole?" Have you ever typed "it's" when you meant to type "its?" It's just like that. And really, it's a matter of resource allocation. The Space Shuttle, as we now know from the interviews and books coming out of the amazing and dedicated people that made that thing go, was a really risky endeavor. Not so much because we couldn't figure out how to make more redundant systems, or because we didn't have stronger building material, or because we valued the lives of its crew any less than we should have. It was risky due to a lack of weight carrying capacity. It was risky because we couldn't build a whole bunch of safety stuff into it because then, even with the thousands and thousands of pounds of thrust from its massive rocket engines, it would never have made it into space. So, it was an existential trade-off. Either the Space Shuttle goes like it is, or it isn't going to go at all.

Similarly, there isn't enough money in the credit and collections industry to do it right every time. It's just too hard,

and it would be too expensive even if you could. You'd need a guy with a mallet at each and every hole, whacking all of the time – really fast, just in case a mole happened to pop up! And then, what if – because he's a human whacker – he missed once? If you spent all of your company's profit (and more) trying to prevent a violation that probably wasn't going to be noticed anyway, you wouldn't have a company. Your employees and their families would have to look elsewhere for work. What kind of benefit to society is that?

Already, regulatory pressures from agencies like the Consumer Financial Protection Board are causing a curtailment of debt collection activities across the country. While this dynamic will probably ebb and flow with the various government administrations to come and while we can argue that more of this or less of that is good or bad for America, the fact remains that even if you and our government really wanted to, I'll say it right here: It's impossible to extend credit, report on credit or collect on loans in a 100% legally compliant manner 100% of the time. That's simply a fact.

It's impossible to extend credit, report on credit or collect on loans in a 100% legally compliant manner 100% of the time. That's simply a fact.

What does this mean for you? When you tie these two things together: 1) The fact that a creditor's reputation is worth far more to their future business than collection on a presently delinquent account, and, 2) the fact that a certain percentage of collections are necessarily legally non-compliant and, therefore, represent a threat to the creditor's reputation, then, in the instance where a violation is present, you naturally have an overwhelming

amount of leverage against the creditor and its agents who are trying to collect on your delinquent account! This is not to say that there are violations present in every collection, because the pressure to behave in a compliant manner is immense, but the more collection activity directed at any one individual, whether in relation to one account or multiple accounts, the more likely that individual is to reap a statutory violation that they can use to their advantage. They can sue to get their debt forgiven, to get their attorney's fees paid and even to receive compensation for their troubles (called "statutory damages").

To boil it down from the creditor's point of view: It would simply cost too much to do everything perfectly and nobody would care anyway. We're doing the best we can and most people want to pay these debts because they think they should or that they have to, for some reason – maybe to "protect" their credit score. When we get customers who retain counsel and sue or threaten to sue us, they usually have a good case because the lawyer doesn't get paid unless they win, so we'll do what we can to settle the case and make it go away. The last thing we want is some ugly blemish on our reputation that affects our ability to attract new customers or causes us to lose any customers to our competition! Why would we risk losing a dollar just to maybe fish a penny out of the drain?

WHY DO YOU PAY?

If this question has given you a brief fit of mental blankness, or irritation, or even a minor rage, thanks for being honest about it. Before I ask you to ask yourself a little bit more about it, let me tell you, from a professional's perspective, why you pay.

If you are a borrower who has a majority of their loans and other financial obligations current (that is, non-delinquent), you will most likely pay out of the optimistic self-interest that performing on your credit obligations today will ensure your access to perhaps even more credit in the future. And with this credit and more, you'll be able to grow permanent wealth tomorrow in a drastically shorter time than you could otherwise. Think of people borrowing for a professional degree which then draws a high salary, or giving a mortgage note on a house that can be owned outright in 30 years, or using credit cards to start up an online business that becomes very profitable. You're keeping that credit report clean and that credit score high so that your next \$217,000 mortgage doesn't cost you \$75,000 more than it should over the life of that loan. Bully for you!

If you are a borrower who has a majority of your loans in default (delinquent, in collections, written-off, legal judgments) you have probably realistically abandoned hope that you will gain the credit-leveraged ground pursued by the person in the scenario above (which may well be your recently former self). You may now be shooting for the magic "zero" or "debt-free," which really, if you think about it, may only mean the end of the pain or defeat to you but doesn't actually have anything to do with any accelerated or leveraged prosperity. You may be paying to maintain your life's status quo, so that things don't get any worse (whatever vague and undefined form that might take)

than it already is. You may be paying because all of your friends are paying, you may be paying out of pride, you may be paying out of hope. I don't know exactly what's going on in your head and I don't know whether or not you know what's going on in your head, but as a credit and collections professional, I know that there are three main hard and fast reasons why you'll pay the debt collector.

One: Moral Obligation. "Oh silly," some of you are thinking, who in their right minds would be "morally obligated" to CityCapital?! Whoa, not so fast. Moral obligation is the number one motivator of payment on delinquent accounts. Number one. And it's not a feeling of duty owed to the bank or the doctor or the auto finance company, is the duty owed to oneself to live a righteous life in accordance with just and honorable principles and which is worthy to be emulated by one's children and respected by one's peers and parents. If you drew an irritated blank at the title of this whole chapter, then this very likely describes you.

Moral obligation is the number one motivator of payment on delinquent accounts.

People make their beds in this life and then deserve to lie in them. Those who seek to rewrite the rules in their favor are less honorable, less mature, less "real" and in some sense, less entitled to be part of this human cooperative endeavor that we call "society." Greedy people and cheats get theirs in the end, whether it's here on Earth or elsewhere. OK, this is a fine way of thinking (though certainly not the only way) right up until the point where you think, "So, therefore, since I borrowed the

money, I'm just going to have to find a way to pay it back." Stop right there.

You did borrow the money and you can choose to pay it (whatever that "it" has now supposedly become as it has progressed through the collections process) – but do you "have" to? Is it possible that you might not be thinking as deeply as you could about the distinction between a moral obligation and a legal obligation? Do you have a moral obligation to try to save a drowning stranger? (That's your call.) Do you have a legal obligation to do that? (No, you don't.)

Is it possible that you might not be thinking as deeply as you could about the distinction between a moral obligation and a legal obligation?

If you're a homeowner in Alaska, California, Texas, or any one of the other roughly 12 mortgage non-recourse states and you default on the \$300,000 mortgage loan you signed in ink for, and the bank takes your home away from you and sells it for \$200,000, do you "have" to pay them back the remaining \$100,000? No, you don't. You can pay if that's what your moral compass compels you to do, but you have no legal obligation to do so whatsoever. That's because the law in those states says that those borrowers aren't liable for that portion of the unrecovered loan (which is called a "deficiency"). Would you pay it back? Would you use that money for something else instead? Your children? A local charity? What if one of your relatives worked at a branch of that bank in a distant state? "But this isn't my situation!" you say. "I don't live in one of those states, and

besides, I have a credit card account! There's no law that says I don't owe that!" Are you sure?

How do you know when a legal obligation is actually a legal obligation? When it's enforced in a court of law, that's how. How do you know when a person accused of a crime is actually guilty of that crime? When the jury or the judge of a proper court says she is. Listen to me: It's the same with your situation, your creditor and their collectors are telling you blah, blah, blah about how much you owe and why and by when, but what happens when they can't or couldn't prove it in any court? What happens when their mishmash of Excel spreadsheets that have changed hands dozens of times from collection agency to collection agency and from original creditor to debt buyer to debt buyer can't give any court in the land anything near a warm-fuzzy about you being actually legally responsible for whatever today's balance supposedly is? "Oh, but my credit score!" you say. Nope, it's illegal to report a disputed account as valid without a thorough investigation and a number of other administrative hurdles. Plus, it's illegal to "re-age" old debts to make them appear newer and to try to keep them from automatically falling from your credit report after seven years. It's also illegal to sue, or threaten to sue, you for debts that are a certain number of years (depending on your state and the type of debt) older than the date upon which you last paid on them!

Collectors are telling you blah, blah, blah about how much you owe and why and by when, but what happens when they can't or couldn't prove it in any court?

Do you feel any different now? Do you see any light in that gap between what's a moral obligation and what's a legal one? You don't have to hate anyone or anything or make a villain of Wall Street or big banks – it doesn't have to be black or white. You can feel a moral obligation for something that's not a legal obligation, just like you probably do for the drowning stranger in the scene above. It's just that now you have the power to choose. When considering the limitations of your current financial resources, do you feel a greater moral obligation to CityCapital or to the billing department of your child's school? I'm not telling you what to choose, I'm just telling you that the choice is, in fact, yours to make. And as singer/philosopher Geddy Lee of the band Rush tells us, "If you choose not to decide, you still have made a choice."

Two: Friendship. Yes, fight me on this one if you must but there are reams of data and countless collector bonus checks written every year on the back of 100% genuine human kindness. Collection agencies hire people who like people. They hire people who have been in debt. They hire people who are currently in debt! They hire people who have lost grandmothers and fathers and who have had medical troubles and who have been out of work before. They hire the kind of people that you would hire to babysit your own children. They hire them because they want you to have a friend. They want you to have someone to talk to, to share your frustrations with, to listen to your life and know a little bit about exactly what you're saying. Your life is full of competing priorities. You've got various incoming calls to take and you've got various bills to pay and creditors to satisfy out of your currently inadequate income. Assuming that you haven't decided to just stop paying everyone to whom you owe money, you've got a decision to make. Whose call are you going to take? Who are you going

to pay a little bit this month? Is it going to be that jerk who makes you feel like you're some kind of deadbeat – or is it this guy who is always so patient and understanding and takes more time with you than his boss says he should? Wait a minute, are you paying a little bit of this money for a friendship?! You are. You did that.

Wait a minute, are you paying a little bit of this money for a friendship?! You are. You did that.

Three: Fear. Admit it – you feel some measure of anxiety about the uncertainty surrounding what happens next if you don't get into some kind of payment plan or settlement that makes your collector happy. You've got a little swirl of something like shame or guilt in there and it's mixing around with frustration and it may either be making you sad or pissed off, but either way, that fear monkey, however big or small, is telling you that it just may be a good idea to just pay a little bit each month on this one.

Gotcha. Have you noticed that it heightens the unpleasant sensation for you when the collector also has no idea what's going to happen next to your account? That it “may be subject to the full range of legal action,” or that maybe “it will be referred to secondary control,” or some other kind of ominous-sounding, mostly nonsensical thing? That's because the process is designed that way. It's designed by analytically-thinking collection professionals in order to sow the maximum amount of disorientation and vagueness in your mind, knowing well that it will be you who fills in that void with whatever terrors terrify you in particular. (This technique, by the way, is much more effective than the outright illegal boiler room tactic of telling you that you're going to be “served with a warrant” and/or “possibly

arrested” – although that still does happen.) So, you’re kind of building your own prison. You might unconsciously dredge up the embarrassment of being sent to the principal’s office in third grade, or maybe the recent court-related nightmare you went through with your divorce or child-custody battle, or perhaps simply the plain old additive stress of just one more straw on the already-out-of-control camel that is your life.

Let me put you down with a solid tranquilizer: Nothing’s going to happen. Nothing bad, nothing good, just pretty much nothing except what keeps happening – the calls, the letters, the blah, blah, blah until you relent or fight back. The wizard behind the screen is a lazy fat man who roars between belches. He scares many into paying and cares little about the rest. Your account will indeed go to some superior nutcracker on the collection floor who will bust your balls some more. Then it will go quiet for a while, during which your account is recalled by the creditor and either sold to a debt-buyer or reassigned to another collection agency that is, hopefully, better at nut-cracking or catches you on a better day, or just catches you finally out of the breath necessary to resist. Your account may get referred to a legal collection firm, which will certainly raise your blood pressure. You’re being sued! You and seven thousand other people that month in a chaotic legal robot dance that the collection law firm can barely control which, hopefully for them, will end up in a legal judgment against you because you were either in blind denial or too freaked out to show up to court – or both. That’s it. That’s the whole cycle. No more mystery. No more fear for you.

The wizard behind the screen is a lazy fat man who roars between belches. He scares many into paying and cares little about the rest.

DO'S AND DON'TS

Welcome to the practical application section of this book. Some of it is strategic because without strategy, you may fight the wrong battles and end up in a weak position. Some of it is tactical because in a legal landscape this complex, outcomes can often turn on a single word. Some of it is mental because your mindset has everything to do with how pleasant or unpleasant an endeavor is to you and, therefore, how likely you are to be successful at it.

Your mindset has everything to do with how pleasant or unpleasant an endeavor is to you and, therefore, how likely you are to be successful at it.

HOW TO WIN

1. Know yourself. Who are you about money and debt? Can you see yourself with way more money and way less debt? If not, why not? If that's just "not you," are you willing to change into a different person? Nothing can get better without change, because better is different – and that means something changed.

2. Get over it. You've got feelings associated with your debts. They're complicated and there's a lot of them all mixed up together and they feel real. Don't waste time picking them apart, just decide to get over all of them – all at once. In one single hour, put them all in a dull metal mental box for unpacking later when you've fixed your current financial reality and can afford to learn more about your personal emotional history poolside or at the beach. Psychiatrists will flip out at this advice, but the Marine Corps knows what it's doing when it teaches you to "put the mission first."

3. Create courage. Courage isn't a power that arrives at your door spontaneously. Nobody wants to jump into cold water – nobody. Courage is the general description of activities that people of average self-discipline perform while they're scared witless. Like lifting weights to build muscle, it's always an effort. But do things (like those in this list) while you're still afraid and you will develop the capacity to do more things when you're even more afraid. Get comfortable being uncomfortable. If you weren't at least a little bit used to this already, you'd have never left the house this morning!

4. Decide and commit. Decide that you are deserving of prosperity – or at least just as undeserving as others who are more prosperous than you – and commit to that decision. Don't spend your precious emotional energy re-hashing every morning whether or not you're a good person and whether or not you've got good things coming to you. Who cares? What good does that do? I'll tell you what's going to actually bring you prosperity: Deciding that you're going to get it. Now close that door and don't revisit – ever. You will now begin to automatically and unconsciously take actions in accordance with that decision because that's how the human mind works. Decide now, and then see if the things below seem crazy or too hard to do. Of course they don't!

Decide that you are deserving of prosperity and commit to that decision.

5. Protect your money. You and the people you love need you to have that money, now and in the future. Don't leave the back door open. Put money that's exempt from garnishment or involuntary seizure pursuant to a legal judgment in your state (look it up) into a stand-alone bank account and don't ever mix it with any other money from anywhere else. Close your accounts with the large national banks (except for garnishment-exempt funds, if you choose) and put your money into a local bank, or better, a credit union or two. Why? Information about exactly who has money at which large national banks is mysteriously available to creditors and debt collectors for a price. Also, credit unions more closely protect their members' data and they offer way better rates on everything financial. One of mine even refunds the ATM fees when I use other banks! You may be qualified by reason of where you live, work

or what letter your last name starts with – seriously. Check out www.mycreditunion.gov. Close every bank account that you ever listed on any application for credit that is currently in default. Sometimes (but rarely), those application documents do follow the accounts into collections and you don't want that account getting zapped if your creditor gets a legal judgment.

Close every bank account that you ever listed on any application for credit that is currently in default.

6. Save your mail. Either pull your ostrich head out or push it through to the other side of the Earth because those collection letters may very well lead to the reduction of your debts and to more money in your pocket – like up to \$1,000 for each successful debt collection legal violation lawsuit. What if you've been getting illegal collection letters for years and throwing them all away unopened because you thought you knew what they were all about? All while your alleged debt was growing under compounding interest and fees. You've only got one year from the date of violation to sue a debt collector under the Fair Debt Collection Practices Act, so go dig out at least every collection letter or notice that's less than 12 months old and put them in a stack for safekeeping and legal review. You don't even have to open them if you don't want to – an attorney evaluating your case will be happy to do that for you!

Collection letters may very well lead to the reduction of your debts and to more money in your pocket - like up to \$1,000 for each successful debt collection legal violation lawsuit.

7. Communicate. Oh, but you want it all to stop yesterday! It will, when the war is over and you've won and you're already way closer to that end than you were at the beginning of this book. You can choose to send a "Cease Communications" letter to every collector and creditor (or a blanket refusal to pay the debt, which has the same legal effect) that contacts you, but then you'll be driving your account closer to the legal process, which has more significant consequences if things go wrong, and you'll be missing out on the opportunity to harvest illegal collections evidence. So, keep 'em talking! Make a little log of who called from where when and what they said. Did they use any profanity? Threaten legal action? Did they tell you every single time that they "are a debt collector and that any information gained from the call would be used to collect a debt?" Seriously, all of it? Every time? Even when you told them it was an inconvenient time and invited them to call you later? Did they call a whole bunch of times and just hang up - but you know it was them from your Caller ID? Did they leave a voicemail message? Keep it! Did they tell you one balance, but their letter said a different one? Did they tell you something incorrect? Inaccurate? Did they call you at work after you told them not to? Did they call your boss? Your mom? Your sister? How many times? What did they say? It's a game that you're eventually going to win because no creditor and their series of collectors can realistically get it right every time all the time. Be friendly! Get their guard down. Make the notes.

It's a game that you're eventually going to win because no creditor and their series of collectors can realistically get it right every time all the time.

8. Get a manager involved. When you demand to speak to a collection manager or supervisor, you create hope for them that a different person in their office is going to get a more favorable result from you. You also subtly hurt the feelings of your collector, which is likely to be unconsciously expressed by them to you in ways that are disadvantageous for their firm. This technique also creates psychological separation between the collector and the manager regarding your account, and, most importantly, it now implicates the processes by which the accounts are collected and the collectors are managed at the collection firm. When something in the collection of your account goes wrong for them, they can now no longer lay the entire blame at the feet of the since-fired collector and they have to defend their whole corporate system for controlling the process of collections.

9. Get it in writing. Did you get a collection call? Did they make an offer of settlement? A payment plan? Tell you the creditor's requirement for a "hardship discount?" Have them send you a letter outlining all of it before you will even consider the offer. Then keep that letter. Then have another conversation, then get another letter. Don't refuse to pay a debt (because that may stop them from calling), but "dispute" every debt and request "verification" of the debt – in writing (build a form letter for yourself to make it brainless) within that 30 day period from when you get the first collection letter from each new collection agency. By the way, did they make any request or demand for payment during that 30 day period?! (That could be a significant liability for them due to the "overshadowing" we discussed earlier). Over time, the letters will begin to show inconsistent information about what is supposedly the exact same overdue account. Inconsistencies like when the account was opened, who the original creditor was, what interest has accrued at what rate, etc. Inaccurately representing a debt is a major legal violation – do you see where this is going? So hang

in there and play to win. Begin to love the game you're going to win.

10. Ask for help. Break the cycle of silent shame. Open up to others you know and help them to help themselves out of what is probably the exact same problem you're having. The U.S. Government wants you to be protected, that's what the Federal Trade Commission and the Consumer Financial Protection Bureau are for – check them out online. Private practice attorneys are dying to have a client like you! The attorney evaluates your evidence (which you've got in letter and phone log format), and if you've got a good case, will pay all of the costs associated with litigation and/or settlement. Who pays their fee? The defendant debt collector – by operation of law. You can find them under categories like “Consumer Protection Attorney” or “Debt Collection Defense” or “FDCPA Attorney.” Expect outstanding customer service and don't settle for less. If one attorney doesn't see a good case in your set of facts, try another one. Note, the more evidence you have in letter format, the less likely it is that you'll actually have to ever be inconvenienced with testifying in court or at a deposition. Will the terms of settlement in a strong case include a letter of complete satisfaction of your debt? You can go that route, or keep the supposed debt alive and see what other violations come out of it. What's next? Did the creditor accurately report the status of your debt to the credit reporting agency?

The more evidence you have in letter format, the less likely it is that you'll actually have to ever be inconvenienced with testifying in court or at a deposition.

HOW NOT TO LOSE

1. Don't take it personally. These calls, these letters, this account, that account, your feelings – they're not you. They're not even about you personally. Your delinquent account is just another string of numbers next to another string of numbers next to hundreds of thousands of other strings of numbers. Nobody on the other end really cares that much (until they get sued) – and neither should you. Collectors are going after low-hanging fruit. Don't be low-hanging fruit and don't let old feelings get in the way (see above about what to do about those) of playing the game well and winning. Be a pro and leave your emotions in the locker room. Be friendly and engaging and help them to help you by sending you as much erroneous data (it doesn't much matter whether or not it is intentionally wrong) as possible about your supposed account, which they most likely can't prove in any court anyway. Don't get upset. Don't threaten to sue or tell them that you have a lawyer when you don't. Don't B.S. them – you have absolutely no reason to. Hang up the phone when you're done or when you're feeling irritated or bored. You're in control. Be kind. Stay frosty.

Don't be low-hanging fruit and don't let old feelings get in the way of playing the game well and winning.

2. Don't debate. Don't let creditors and collectors see this new side of your consciousness – ever. Be the docile lamb they're hoping you are and you'll get much closer to your goals much more quickly. Also, don't negotiate unless it's with the purpose of creating more written evidence from them to you, or unless you think you're getting to somewhere you want to be and

you're going to get it in writing. The process of negotiation typically involves both parties agreeing to the validity of each other's assumptions. Ask yourself this: Are you going to settle at 63 cents on the dollar because you kind of think maybe that this account with the impossibly long chain of title from debt buyer to debt buyer to debt buyer can be successfully sued on and won by the collector? How much money are you paying for that ridiculous peace of mind? What are those odds? Are you buying the equivalent of "meteor insurance?" Have you talked to a lawyer yet? So beware - everyone from your uncle to your spouse is thinking exactly the same way you were thinking before you read this book. They will validate the world as your creditors and debt collectors want you to see it. Trust the information you've gotten here, trust me, and trust yourself to execute on a reasonable game plan for your return to prosperity that includes using the applicable laws to your advantage.

Trust yourself to execute on a reasonable game plan for your return to prosperity that includes using the applicable laws to your advantage.

PRE-GAME HUDDLE

While this section marks the end of this book, it's really just the final eyeball-to-eyeball check before you get out there on the field as the new you and play this game to win. My goals from the outset have been to give you a wide-open no-kidding view inside the actual world of consumer credit and debt collection. I want you to know exactly why the things that I'm telling you to do are so significant and effective. I want you to understand that the sharp pointy thing that sticks up (that's you with a solid consumer lawsuit) pierces the skin and draws blood - which is why it typically gets avoided or settled away. I want you to realize that the economics and practical realities of consumer credit and collections make it impossible for creditors and collectors to do what they are legally supposed to do 100% correctly, 100% of the time, and that this means that you might actually have a good solid case (or cases) that you don't even know about because the laws involved are just that detailed and often counter-intuitive. Finally, I want to forcefully nudge you to get over whatever emotional feelings stand in the way of you sorting out the difference between your moral obligations and your legal obligations and into taking action for the benefit of your own prosperity and that of your family and community.

Get out there on the field as the new you and play this game to win.

A cynic and a normal person were walking down the street together one day. "My goodness," cried the normal person as they simultaneously saw the object of his exclamation

there on the sidewalk before them, “a five-dollar bill!” “Oh, please,” said the cynic, “if that were actually a five dollar bill, someone else would have picked it up already!”

You are already holding the five-dollar bill. In reading this far, you’ve bent down, picked it up and are now feeling its rugged smoothness in your fingertips. Go ahead, save it or spend it. I assure you that it’s quite real. I also assure you that you will begin to see many more five-dollar bills – just like they started appearing out of nowhere – because now you know how to see five-dollar bills, and how pick them up. You didn’t pick up this book totally by accident. Congratulations! Use your new tools and dare to live prosperously. Others are doing it, why not you, too?

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THE **SECRET** OF DEBT COLLECTION WORLD

Do you know that millions of dollars of debt are collected illegally every year?

Do you know that it may be possible for you to receive a payment from a debt collector or creditor for legal damages?

The Secret World of Debt Collection shows readers how they can reduce their personal debt and possibly win thousands in legal compensation.

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