The Attorney's Guide to Successfully Dealing With Your Creditors

By
Heidi S. Milam
Attorney at Law, PLLC
7160 Tchulahoma, Suite A5
Southaven, MS 38671
(662) 349-2322

The Attorney's Guide to Successfully Dealing with Your Creditors

Table of Contents

NOTICE

THIS BOOK IS NOT A SUBSTITUTE FOR ACTUAL REPRESENTATION BY A LAWYER.

YOU SHOULD ALWAYS TRY TO CONSULT OR HIRE A LAWYER BEFORE ANSWERING A COMPLAINT OR APPEARING IN COURT. THOSE WHO REPRESENT THEMSELVES IN COURT DO SO AT THEIR OWN RISK.

YOU SHOULD BE AWARE THAT LAWS ARE CONSTANTLY CHANGING AND THAT IT IS YOUR RESPONSIBILITY TO BECOME AWARE OF YOUR STATE'S LAWS.

UNDER CURRENT BANKRUPTCY LAW, I AM A DEBT RELIEF AGENCY. I HELP PEOPLE FILE FOR BANKRUPTCY RELIEF UNDER THE BANKRUPTCY CODE.

Introduction

My name is Heidi S. Milam and I am licensed to practice law in Mississippi and Tennessee. If you want to check with the Bar Associations about me, my Mississippi bar number is 9813 and their website is www.msbar.org. My Tennessee bar number is 16283, and the phone number to the Tennessee Board of Professional Responsibility is 1-800-634-2516. I graduated from the Cecil C. Humphreys School of Law at the University of Memphis (then Memphis State University) in 1992. I worked for a collection attorney during law school and for eight years after law school in Memphis, Tennessee. I then spent one year working for a firm that specialized in foreclosures and bankruptcy representation for mortgage companies. After that year, I again went to work for a firm that specialized in collections for a year and half, until I finally resigned that position to open my own office in Hernando, Mississippi, to specialize in consumer credit law. I created this website and the Attorney's Guide to help people understand their options and rights in dealing with their creditors. During my creditor practice I represented the credit division of the two largest automobile manufacturers, the credit division of the largest retailer in the world, numerous department store credit divisions, most major national banks, mortgage companies, and credit card companies, and most local banks and credit unions. Because of my extensive experience representing creditors, I am uniquely qualified to educate consumers on how to deal with their creditors during good times and bad. Since 2003 the majority of my practice has been representing clients in consumer bankruptcies.

In this book I will reveal many little known aspects of the legal collection system that are invaluable to the consumer. I hope that you will find the information educational and useful in your dealings with your creditors.

Chapter One

Some Debts Are More Important Than Others

It's true, it is more important for some debts to be paid than others. How do you know which are the most important debts for you to pay. There are some universal guidelines to remember, and there are some rules that will be particular to your situation. First, we will cover the rules to remember no matter what your situation might be.

- You must learn the difference between **secured** and **unsecured** debts. A secured debt is one in which you have pledged collateral as security for the debt. The collateral could be real property such as your house or land or it could be personal property such as a car, appliances or furniture. The significance of the different type of debt to you is that a creditor can repossess the collateral pledged for a secured debt to use for payment of the debt in case you default on the debt.
- Pay for **necessities** first such as food and medical expenses if you must pre-pay to receive treatment. This does not include old medical debts.
- Your **rent** or **mortgage payment** has priority. This includes real estate taxes and insurance payments if they are not included in your monthly mortgage payment. I have seen many people fall into a trap when they did not give their rent or mortgage payment priority and were never able to catch up payments and subsequently lost their property. If you are having such severe problems that you must move to a cheaper home, you might want to stop paying your rent or mortgage. However, if you do this, do not use that money on other debts but save it to use for a fund to move and as a deposit for another home.
- Pay your **utility bills**. You may not be able to pay the entire amount. You can contact your utility company to negotiate the minimum payment to keep your utilities.
- If you need a **vehicle**, pay your car loan or lease. This includes the required car insurance as well, because if you do not pay your insurance, your creditor will place insurance on you vehicle that only insures their interest and does not give you any liability protection.

- **Child support debts** are extremely important. The consequences for nonpayment of child support can be severe, including imprisonment.
- **Income taxes** are also high priority. You must also file your return even if you cannot pay the balance due.
- Loans used to purchase personal property such as furniture or appliances are more important than loans where you pledged personal property that you already owned. The creditor that loaned you the money to buy a houseful of furniture is much more likely to try and repossess that furniture than the creditor that you pledged two televisions and a VCR for a $500.00 cash loan. This is because the first creditor knows exactly what you bought, the age and the approximate value. The second creditor really has no idea even if you owned the items that you pledged or the condition or value.
- Nonpayment of student loans can have severe consequences. Federal law provides special remedies for nonpayment of student loans which include actions such as seizure of your tax refunds and special wage garnishment rules that allow garnishment without a judgment. There are rules that have provisions for economic hardship forbearances and deferments. You must contact your lender to determine the procedure for these actions.
- Unsecured debts have the lowest priority. These include most credit cards, debts to doctors or hospitals and debts to other professionals.
- Have you cosigned a loan for anyone? If so, you must treat that debt just as if you are the only one on the loan and give it priority if needed. While you may get lucky and the person that you cosigned for will always pay the debt, it is very likely that you could be held liable for the entire amount, regardless of who has possession of any collateral that might have been used to secure the loan. For example, if you cosigned for someone on a car loan but you never drove the car or even rode in the car, you could still be held liable for the entire amount of the loan if they default.

  What about if your creditor has already started some form of collection action against you? Much of the rest of this book is devoted to what to do in that situation; however, there are some priority guidelines you must keep in mind.

- **Do not move a debt up in priority just because a collector is calling you about it or has threatened a lawsuit.** As I discuss in more detail later in this book, threats of lawsuits are often not carried out. A good collector can make you feel that it is the most important thing in the world that you pay that debt, however, that is not always the case. Always keep the above listed principals in mind in determining what debt to pay.
- **Do not move a debt up in priority because the collector has threatened to report it on your credit report and ruin your credit.** To be honest, the fact that you are delinquent is already on your credit report. Often the collector is calling from a collection agency that cannot even make a report to the credit bureau. Please see the chapters discussing your credit report and credit repair for further information.
- **If you feel that you have a good defense to the debt, do not pay the debt.** A defense could involve a claim that the merchandise was defective or if the creditor is seeking more money than it is entitled to. Much of the rest of this book explores what to do if you have a defense to a certain debt.
- If the creditor has already obtained a judgment against you, you must evaluate the likelihood of the success of collection efforts before deciding whether or not to pay the debt. I have discussed this further later in this book in the chapter regarding attachments, executions and garnishments.
- Do not pay a debt because you like one creditor more than another. Just because the hospital has a very nice person that calls you and asks you to pay your bill, do not allow that to sway you into paying the hospital above your car loan.

Chapter Two

Credit Mistakes That Can Cost You

When people are stressed financially, it often seems that common sense goes out the window and they make more mistakes either just trying to get by or trying to get out of their financial situation. In this chapter I will explain why some things you might be thinking about doing are serious credit mistakes.

Mistakes you can make with your checking account – The first mistake you can make with your checking account is writing **postdated checks**. Often collection agencies will persuade you to send in a stack of postdated checks to pay off an account. The problem with this plan is that it is too easy to neglect to write each check in the register or to take them into account when balancing your checkbook. If you forget to write one down or feel like you want to take a chance that the check will not be cashed on time, this can lead you to another major mistake you can make with your checking account, which is **bouncing checks**. Whether intentional or not, bouncing checks is a crime. Some states do not actively prosecute bad check writers, and some states do actively prosecute bad check writers. Even if you do not wind up with a criminal record from bouncing checks, your bank may refuse to allow you to have a checking account and before long you may be unable to write a check anywhere.

Another mistake you can make with your checking account is using a check for cash or cash advance service. This is a company who will take your check and for a fee, give you some money for that check. They will hold the check for a short period of time (until your next payday) and then cash it. The problem with these services is the high rate of interest you wind up paying. For example, if you need one hundred dollars and your payday is two weeks away, you can go to one of these lenders and write them a check for $128.00 and they will hold it for two weeks before cashing it. Therefore, you have just paid them $28.00 to get $100.00. If you calculate this on an annual percentage rate, it would be over 700% a year! Is there any other loan that you would agree to at 700% interest?

Mistakes you can make with your personal property – There are many mistakes you can make regarding personal property such as televisions, appliances, and cars that

you own. Probably the most tempting mistake you can make with your personal property is to **sell collateral that is security for a loan**. Your personal property is security for a loan if you borrowed money to pay for the property and the lender had you sign a pledge or security agreement that states that if you are unable to make your payments, the lender has the right to come and take the property. You may also have pledged property that you already owned as security on a loan. In either circumstance it is illegal to sell property that you pledged as collateral on a loan. Just as with postdated checks, many states would not prosecute such a crime; however, the creditor will often seek recovery in a civil suit for money damages.

Pawnshops and **auto title pawn** are also mistakes you can make with your personal property. Just as with the check for cash service, the mistake you will make with these services is the exorbitant interest rate you wind up paying. Generally, a pawnshop will only give you approximately 50% of the value of your property, so that they can be assured of getting their money out of the property if you do not pay for your property and they have to sell it. The minimum interest rate you are going to pay if you use a pawnshop or title pawn will be 240% with some interest rates going over 800%. And those rates are just for starters. If you are not able to pay the entire amount back, the pawnshop will let you pay the interest indefinitely and you may never get your property back.

Rent-to-own plans are also a credit mistake. Again, this is because of the exorbitant interest that you end up paying if you keep the property over the life of the agreement. These interest rates are over 200% or more. Additionally, the property that you rent is likely to be used and not in as good condition as you were led to believe when you signed the contract. Worst of all, the rental contracts are written in such a way that you will lose the property just for missing one payment, no matter how much you have paid the creditor. This means that even if you miss the last payment due on your agreement, you will lose the property.

Mistakes you can make with your home – This is a virtually endless topic, but in general you need to always be aware of your home's worth versus how much you owe on your home. The market value of your home less the amount that you owe on it is the amount of equity you have in your home. While it is not possible for the average person

to predict the real estate market, you can have property appraised before you purchase a home to make sure you are not paying above market value. Most importantly, if you are considering a home equity loan or home equity line of credit (HELOC) on a home you already own, it is essential that you investigate the value of your home before deciding on whether or not to borrow. Please remember that just because a lender is willing to loan you up to 100% of your home's value, it is not necessarily best. If you ever want to sell your house, you must have at least enough equity in your home to pay the costs of selling the house which could include closing costs and real estate agent commissions.

Other Mistakes To Avoid – You should avoid for-profit **debt counseling**. I have had much experience with these organizations and none of it was good. They often tell their prospective clients that they can lower interest rates and settle accounts for a fraction of what people owe. They cannot lower interest rates or settle accounts any better than you can. Often, creditors will not even deal with these companies because they are third parties and not the actual customer. If your account is already delinquent, there is no way that the creditor will lower the interest rate. As far as settlement, different creditors have different settlement guidelines to abide by based on the age of the account, payment history, and balance among other things. Most creditors are very happy to settle in the range of 70-80% of the debt. Sometimes you may find creditors willing to settle for lower amounts; however, these so-called debt counseling agencies cannot settle accounts for any less amount than you can. Many of these debt counseling agencies are no more than debt consolidators who may or may not pay off all the debts you think you have consolidated. Additionally, you may wind up trading unsecured credit card debt for secured loans used to pay off your other debts.

Another similar mistake to avoid is getting involved in a **credit repair** plan. These businesses will charge exorbitant fees for services that they say will clean up your credit. These businesses are either charging you for work you can do yourself for free or they are advising you to take part in illegal schemes such as creating new credit identities to fool your creditors. The best thing you can do for yourself if you want to improve your credit is either to educate yourself on your rights under federal law and exercise those rights, or hire a qualified attorney to act on your behalf.

One of the easiest mistakes to make is to get involved in a “get rich quick” or “work at home” scam. While these are often so tempting it seems like you have nothing to loose to try them, just remember the old adage “if it seems too good to be true, it probably is”. Some of these offers are so interesting I have even checked a few out myself. Most of them are just outright scams that advise you to do the same thing to others that you had done to you.

Chapter Three

Dealing with Collection Agencies

What is a collection agency? A collection agency is any person or company whose main purpose is the collection of debts for other companies. An attorney who collects a consumer debt for a creditor is considered a collection agency under federal law. Typically, a collection agency will represent several different creditors. Collection agencies are governed by several different laws. Each state has its own laws to govern collection agencies, ranging from requiring state licensing and licensed managers to virtually no state regulation whatsoever. However, every collection agency is governed by a federal law called the Fair Debt Collection Practices Act (15 U.S.C. §1692). We will focus on the rights that this law grants every consumer when dealing with a collection agency.

It is important to remember that if you are contacted directly by your creditor, even if it is the credit or collection department of that creditor, they are not a collection agency by law and are not governed by the laws that govern collection agencies. This means that a creditor will play by different rules than the collection agency. Each creditor has internal guidelines that determine how it will treat your account. Different creditors will keep your past due account for different periods of time before sending it to a collection agency or an attorney. They are not required by federal law to keep your account any certain amount of time, nor are they required to notify you if they sell your account or if they send it to a collection agency or attorney. Many people have the misconception that they will get "one last chance" to bring their account up to date before it is sent to a collection agency. This is simply not true.

Collection agencies, however, are required under the Fair Debt Collection Practices Act (FDCPA) to notify every consumer of their right to dispute the debt if they do not believe that they owe the amount the collection agency is trying to collect. If the collection agency first contacts you by telephone, you **should insist that they also communicate with you in writing**. The first written communication from a collection agency must include:

- The name and address of the collection agency.

- The amount of the debt, stating the original debt and a breakdown of other costs or interest.
- The name of the creditor to whom the debt is owed.
- A statement that unless you dispute the debt within 30 days after you receive the notice, the agency will assume the debt is valid.
- A statement that, if requested within 30 days, the collector will provide the name of the original creditor, if different from the collector.
- A statement that if you notify the debt collector in writing within 30 days of receiving the notice that you dispute the debt, the collection agency will get verification of the debt and mail it to you.

Additionally, every communication from a debt collector must state that it is from a debt collector and that the purpose of the communication is to collect a debt and any information obtained will be used for that purpose.

What does this mean to you? First of all, if you do not feel that you owe the debt you must send a letter to the collection agency disputing the debt as soon as possible and asking for verification of the debt. The law gives you 30 days to send this letter, but it is always best to send the letter as soon as possible. I would recommend sending the letter even if you are not sure whether or not you owe the debt. Often your debt may have been sold from one creditor to another, and each creditor may have added on additional interest and/or fees that you are not liable for. The best move is to send a letter asking for verification of the debt. This will do two things for you: 1. The creditor cannot take any further action to collect the debt until it has sent you verification of the debt; 2. The verification that you receive will show you what information the collection agency has about your debt and allow you to evaluate the next steps you should take. There is an example of letter disputing a debt and requesting verification of the debt in the chapter of this book entitled Forms.

Once you have received verification of the debt from the collection agency, the agency is free to contact you again to attempt to collect the debt. Whether they contact you by phone or in writing they must include a statement that the communication is from a debt collector, they are attempting to collect a debt, and any information obtained will

be used for that purpose. If this statement is not included in the communication, the collection agency has violated the FDCPA and they could be held liable for the violation.

What if you don't want the collection agency to contact you any more? You have the right to send the collection agency what is known as a "cease & desist" letter informing the agency that you do not want them to contact you any longer. You can send them this letter whether or not you owe the debt. This letter must be in writing and an example of a cease & desist letter is in the Forms chapter of this book. Basically, the letter must include your name and address and, if available, your account number with the agency and with your original creditor; the date of the letter; a statement that you are exercising your rights under the Fair Debt Collection Practices Act; and a statement that you want the collection agency to stop calling you or writing you, or both. The only communication that the collection agency is allowed to do after receiving such a letter is to advise you that it is stopping its effort to collect the debt or to advise you that the collection agency intends to take action such as filing suit. **It is important to remember that a collection agency or an attorney is not required to notify you prior to filing suit that it is about to file suit.**

The following are common examples of violations of your rights under the FDCPA that can result in recovery for you against the violator:

1. The collection agency threatens to tell your employer or neighbors about the debt, or actually does tell them about the debt;

2. The collection agency calls at unreasonable hours (after 9:00 p.m. and before 8:00 a.m. is considered unreasonable under the FDCPA

3. The collection agency threatens to take action against you that it cannot legally take (for example, threatening to take money out of your Social Security check, taking other exempt property, or threatening arrest, or jail)

4. The debt collector communicates with the debtor or anyone else in such a matter as to harass, intimidate, threaten, or embarrass the debtor.

5. The debt collector communicates with the debtor or the spouse more than three times in a single week.

6. The debt collector communicates with the debtor through the use of notices that simulate the form of government documents, or the appearance of a telegraphic or emergency message.

7. The debt collector is prohibited from soliciting a postdated check in order to threaten criminal prosecution. A collector may not deposit a postdated check before the date on the check. Additionally, a collector's acceptance of a postdated check violates the law unless it gave the consumer who wrote the check 3 – 10 business days' notice prior to depositing the check.

ACTION STEPS TO TAKE IN DEALING WITH COLLECTION AGENCIES:

- ✓ Request that all communications be in writing.
- ✓ Send a letter asking for verification of the debt.
- ✓ Send a letter asking that all communication be ceased.
- ✓ If possible, send all letters to the collection agency certified, return receipt requested so that you know that the collection agency did in fact receive your letter.
- ✓ Keep a copy of all letters that you send to the collection agency.
- ✓ Keep a copy of all letters and other documentation sent to you by the collection agency.
- ✓ If you see that the agency has violated the Fair Debt Collection Practices Act, contact a local attorney to see if the collection agency can be held liable.

Chapter Four

Preventing a Law Suit

There are several things you can do to prevent or slow down your creditors filing suit against you. You have probably experienced receiving calls and letters from your creditors trying to get you to pay money even before your account was sent to a collection agency. If you are like most people, you ignored those letters and calls as best you could. That is the wrong thing to do. You need to keep open lines of communication between yourself and your creditors if you get in financial trouble and do not want to get sued. You need to keep your creditors aware of your situation. There is some merit to creating a little sympathy for your situation with your creditors. However, you do not want to get on peoples' nerves. Do not send them false stories just trying to sound pathetic. These people have heard everything, and if you tell them something unrealistic, they will know.

One thing I hear a lot from people is that they could not pay what the collector wanted them to pay, so they did not pay anything. Wrong action! Those collectors have guidelines for minimum payments that they have to ask for and they cannot agree to lower payments. However, you have to remember that any money you send in will be applied to your account. If the collector asks you for $100 per month and you can only send in $50 per month, go ahead and send them $50! Those payments will be applied to your account and it is very unlikely that they will send your account to an attorney if you are making those payments. That is because even if your payments are not that high, it is better for the creditor to take your small payments than to have to pay an attorney and risk not getting any more money from you to pay off the account any faster. Make sure not to send a check for your payment. Send money order or cashiers check only! We will talk more about this later.

Other things you can do to prevent a lawsuit are things that make it harder for your creditor to pinpoint where they could have you served at, where you work, and where you bank. Many times a creditor will not sue you if they cannot verify assets for you such as a bank account or employment. Some creditors will file suit if they can verify that you are a homeowner even if they do not have an employment or bank

account. If you really want to be unreachable by your creditors, you can do several things to accomplish this. I have listed some of them below:

1. **Use a post office box as your only address.** Keep in mind that your physical address may be listed on your credit report from past activity. Also, the postal service will send a boxholder's address to an attorney if they sign a statement saying that they information will be used for location purposes for a lawsuit. However, the postal service does not verify your address when you rent a box. The most important thing to remember is that if your creditor cannot physically find you, they usually will not sue you. Just because you can get mail and phone calls from them does not mean they can physically find you.
2. **Keep your phone number unlisted or do not have a home phone number.** Many people now use cell phones as their primary phone number. This is an excellent way of keeping your address from your creditors.
3. **Never reveal your employment.** Instruct children or others in the household not to give your employment phone number to anyone. I cannot count the number of times I obtained a work phone number from a child or other family member by letting them think I was just a friend. If a creditor has an employment phone number, they have about a 99% chance of finding out where you work. Again, keep in mind that your employment may be listed on your credit report from past activity.
4. **Never, never, never send a personal check to a creditor that you are behind with or to a collection agency.** If a creditor knows where you are banking, they are much more likely to file suit against you.
5. **How far do you want to go?** You can of course hide your assets in many different ways. I once tried to collect from a man whose Cadillac was listed in his mother's name. He did all of his transactions in cash. And then there are all the men who insist that they are living off their wives with no assets are in their name, including their homes. Of course, it works the other way also, many women list their occupation as housewife and all assets are in their husband's name. For some reason this doesn't stop them from getting credit from many companies.

All of the above information applies whether you are dealing directly with your creditor or with a collection agency. Many times when a creditor sends a past due account to a collection agency, they neglect to send all of the information to the collection agency that they have about a consumer. Sometimes they do not send employment or banking information that they may have collected through the years. Collection agencies, on the other hand, are usually better at locating information about a person. They call this "skip tracing" on an individual and with the advent of the internet, you would be astonished at how much information can be obtained with just a few computer clicks. Now people must work much harder at disappearing from their creditors than in the past. Reports can be obtained from the internet now which have neighbor and relatives phone numbers on them. Social security numbers can be obtained with just a name and address. In the past, skip tracing consisted of calling other creditors that were listed on a consumer's credit report and obtaining information from them. Most creditors will no longer share information because of liability concerns. However, using the internet collection agencies and creditors can now obtain a vast amount of information on almost anybody.

ACTION STEPS TO PREVENT A LAWSUIT

- ✓ Keep open lines of communication with your creditor.
- ✓ Create sympathy for your situation
- ✓ Send in whatever payment you can
- ✓ Conceal your physical address and assets as much as possible

Chapter Five

The Creditor's Decision To File A Lawsuit

Each creditor has a complex set of decisions to make before a lawsuit is filed. First of all, they have internal rules to determine when your account is past due. These rules are normally laid out to you in written form when you obtain credit. Once your account has been designated as past due by the creditor, it will commence internal collection efforts to bring the account current. If these fail, the creditor will take one of several routes. First, it may determine that the account is not collectible and will charge the account off to bad debt. In this situation, the creditor will usually report to the credit bureaus that the account has been closed by the credit grantor and has been "charged off". There are many reasons that a creditor may choose not to pursue collection of an account. The **size of the balance** is the most likely reason that a creditor will not pursue collection. Since most collection agencies operate on a commission basis, many will not accept accounts that fall below a certain balance because even if they collect the full amount, they may loose money on the account if their recovery is not greater than their expenses. Each creditor has a different minimum balance required for pursuing collections. Some creditors will pursue an account with a balance as low as $200, while others require a minimum balance of $1000 or more.

After the decision to pursue your account balance has been made, the creditor now is faced with the decision of sending your account to a collection agency or directly to an attorney who specializes in collections. Again, this may be determined by the account balance alone. Often the higher balance accounts will go directly to an attorney for collection and the lower balance accounts may go to a collection agency. Other considerations are the identification of assets such as employment, bank account, home ownership and vehicle ownership. If the account is sent directly to an attorney, the creditor may even go ahead and give permission for suit to be filed as soon as possible, or they may instruct the attorney to send letters and attempt phone contact before suit is filed. In a few cases, a creditor will use an attorney just as if they were a collection agency and send them accounts that are not to be sued upon at all.

If an account is sent to a collection agency, the collection agency will of course attempt contact through letters and on the phone. The creditor sets the guidelines for the length of time that these collection efforts are pursued. After the collection agency has exhausted its collection efforts, it may send an account to an attorney for suit or it may return the account to the creditor as uncollectible. The disposition of an account is determined by a combination of factors including account balance, asset determination and contacts with the debtor.

It seems that no two creditors have the same standards or procedures for determining if an account is worthy of filing suit or not. Some creditors actually operate on a "gut feeling" type of procedure and look at each individual account to determine if they can collect the balance by filing suit. Often local banks, credit unions, and small loan offices operate in this fashion because they know the debtors personally. Frankly, these are the creditors that are most likely to file suit against you if you owe them money. These creditors often take it personally when their customers do not pay. Large national credit card grantors often have the highest standards for filing suit and will not file suit unless there are known assets and the account balance is at a certain level.

Another option that the creditor has today is to **sell your past due account** to another creditor. There are companies whose purpose is to buy credit accounts from creditors at a vastly discounted rate and then attempt to collect the balances for themselves. These companies are highly likely to file suit because they often have built in the costs of filing suit into the price they paid for the account. For instance, they may buy an account with a balance of $1000 for $150 and expect to spend another $150 to obtain a judgment. However, you can see that if they do collect the entire balance and recoup their court costs they have made a huge profit.

It is important to remember that no matter what standards or procedures your creditor uses to determine whether or not to file suit, there may be months or even years when you do not receive any notices from the creditor or collection agency working on behalf of the creditor. Do not be fooled into thinking that your creditor has forgotten about you and let you "off the hook". I have heard so many times "This isn't fair, I haven't heard from them in a year!" Well, as long as the statute of limitations has not tolled and the creditor has not run out of time to sue you, they can still file suit. We will

discuss statute of limitations more in the defenses to your lawsuit chapter. Another misconception is that your creditor has to somehow give you notice that it is about to file suit. No one has to notify you of an impending lawsuit. It is your responsibility to keep track of the status of your accounts.

One factor that your creditor will not use in determining whether or not to sue is whether or not you can pay the debt immediately. A lawsuit is really about obtaining the money at some point in the future. The creditor takes a gamble on when the money can be obtained. It may be able to get the money in six months or six years. That is part of the risk of filing suit. Just remember, most if not all judgments accrue interest. It may be a statutory minimum rate of 8 to 10%, or it may the rate that was determined by your contract with your creditor.

SUMMARY

- Each creditor bases its decision on filing suit on factors such as the balance of the account, asset determination, and other subjective factors
- Your creditor can still decide to file suit whether your account is placed with an attorney or collection agency
- Your account may be sold one or more times before suit is filed
- You may not be contacted by your creditor for many months at a time; this does not mean that your account has been dropped by your creditor
- Your creditor does not have to notify you that it is about to file suit
- Even if you cannot pay the debt, your creditor may still file suit

Chapter Six

Getting Served With A Lawsuit

Lack of sufficient **service of process** is a very powerful defense to a lawsuit. However, this area of law if very complicated and one area in which you would probably have to seek the advice of a local attorney to determine if you have been incorrectly served. The traditional way in which service of process (the delivery of a lawsuit to a defendant) is obtained is for a sheriff or constable to knock on a defendant's door and hand them the lawsuit. The sheriff then makes a return to the court stating the date the lawsuit was delivered and to whom it was delivered.

The way in which you can be served with a lawsuit differs greatly according to your state's law. One state that I practice in requires what is called personal service in order for a creditor to obtain a money judgment against an individual. The other state I practice in allows for abode service in which any adult member of the defendant's immediate family (wife, husband, daughter, son, parent, etc.) can accept service for the defendant. The Sheriff or process server is then required to mail a copy of the complaint and summons to the individual defendant. Neither state requires a defendant to "sign" for the complaint. This is a common misconception that I hear from people "I never signed anything". Well, you don't have to sign anything to be served with a lawsuit.

Both states that I practice in have provisions to obtain service if the ordinary routes fail. One state that I practice in has a provision for pre-judgment of assets to obtain service. A creditor can actually attach a defendant's bank account or wages or even have the Sheriff pick up their vehicle to obtain service. However, the creditor must sign a bond for the amount of the lawsuit and the application for attachment must be reviewed and approved by a Judge. Both states also have provisions for service by publication of a notice in a local newspaper or by attaching a notice to the defendant's door. These are little used for collection lawsuits because they are frequently open to attack for sufficiency of service.

The reason I have discussed the laws of the two states in which I am licensed in is to illustrate that service of process laws differ greatly between states and the only sure way to know the proper procedures is to check the law in your state. This is one area that

a court clerk will probably help you with. It is a good idea to know the service of process procedures in your state because that is one way in which you can attack the lawsuit if proper procedures were not followed. However, if you appear in court contesting the service of process, the creditor can probably serve you in court or the Judge may even mark the lawsuit as being served due to your appearance. Therefore, if you have a viable defense to a lawsuit due to insufficiency of service of process, it is best to obtain an attorney to appear for you in court.

Many problems arise after judgments have been entered with defendants who claim they were never served even though there is a return from a Sheriff or process server in the court's file. I have had so many people make this claim to me through the years that I became immune to the claim. However, I really do not doubt that it happens. How can this be? Well, often other family members or friends believe they are helping out the defendant by accepting service for them and then do not follow through to give them the lawsuit. Additionally, in many places there are private process servers who will serve a lawsuit to a defendant for a fee and make a return to the court with the service information. Often these fees are relatively small - $25.00 each – and the process servers are of course concerned with volume. While they are usually required to swear under oath that they served the defendant they claim they served, it is easy to see how unscrupulous individuals could easily destroy the system.

If a judgment has been obtained against you and you are certain that you were not properly served, you have your work cut out for you to prove it. One way to prove it is to bring a lawsuit in equity to have the judgment set aside due to lack of process. This procedure is very complicated and is beyond the scope of this book. In fact, if you intend to hire an attorney to undertake this process, interview them well, because there are few attorneys who would understand and be capable of such a procedure.

While it is possible to evade service of process just by not answering the door when you see a Sheriff standing outside with a lawsuit in his hand, you do so at your own peril. Even though the Sheriff may make an honest return to the court and report you as "not to be found in my county", the Creditor may then try a private process server who may not be so honest and may leave the lawsuit with your neighbor or stick it in your

mailbox and report to the court that you were served. Or, the creditor may resort to other tactics to obtain service such as pre-judgment attachment or publication.

SUMMARY

- The traditional service of process in which a Sheriff hands the defendant the lawsuit is still the most common procedure.
- Insufficiency of service of process can be a powerful defense to a lawsuit.
- It is important to be aware of your states procedures for obtaining service of a lawsuit.
- Evading service can often “backfire” on a defendant and cause even worse consequences to happen.

Chapter 7

What To Do When You Get Sued

The first step after being sued is to consult an attorney if at all possible. Even if you have to pay a consultation fee to speak with an attorney regarding your lawsuit, it will be money well spent. Besides answering your questions about the law regarding your case, a local attorney will know the procedures of your local court that sometimes cannot be found on books or online. Once you have consulted an attorney, if you determine that it is not cost effective to hire an attorney or if you do not have the funds to hire an attorney, there are some steps you can take to possibly lessen the damage of the lawsuit and improve the outcome for you. These steps will be outlined below, but are no substitution for a local attorney's representation.

You must determine what is required of you to answer the lawsuit that has been served upon you. Do you have to file an Answer or appear in court first? Some Courts require you to appear in court to answer the lawsuit. Some Courts require a written response to be filed with them and sent to the opposing party or opposing party's attorney. This is perhaps the most important determination that you will make while handling your case, because if you do not appear in court when you are required to appear, or do not file an Answer if required to file an Answer, you will automatically lose, and a Default Judgment will be entered against you.

So, you ask, just how do you determine what you are supposed to do to answer the lawsuit? All you have to do is **read**. If you can read this book, you can read the lawsuit and determine what is required to answer the lawsuit. Another thing you can do to determine what you have to do to answer the lawsuit is to call the clerk of the court that you have been sued in. These people run the court's processes and know quite a bit about the procedure of the court they work in. However, they are not allowed to advise citizens on what they should and should not do. They can tell you if your case has a court date and when and where to appear. Most likely, if you have a court date set, a large portion of answering the lawsuit will depend on your appearance in court. If you have a court date, you must appear or have an attorney appear for you on that date in order to answer the lawsuit. In some cases you must also file an Answer or other response to the

lawsuit. Many times the clerk will tell you if you are required to file an Answer to appear in court. What they cannot tell you is whether or not it would help you to file an Answer or response and what the Answer should contain. We will go into those areas later.

Do not put the lawsuit aside and pick it up three weeks later to try to determine what you should do about it. **There are time limits to answering a lawsuit.** If a written Answer is required, you will probably only have thirty (30) days (some states give only twenty days) in which to file the Answer. If a court date has been set, that date may only be a few days after you received the lawsuit. It is important that you determine what is required immediately after you receive the lawsuit.

If you have a court date and are unable to attend on the date that your case is set, do not let that date go by without action. The best thing to do, of course, would be to hire an attorney to appear in court for you. If you do nothing else, you could have someone else appear for you such as a relative or friend. Most Judges will not consider that as having a non-attorney represent you in court but will instead continue the case for another setting so that you can appear. In some courts, you can even call, fax, or write the court clerk and they will notify the Judge that you are unable to appear and the Judge will continue the case to another court date.

ACTION STEPS AFTER YOU HAVE BEEN SUED

- ✓ Consult a local attorney
- ✓ Determine immediately if a written Answer or a court appearance is required.
- ✓ Do not let your time for a response lapse
- ✓ If you cannot appear in court on the first date set, notify the court either by having someone else appear or by phoning, faxing or writing the clerk.

Filing An Answer

Once you have determined that you must file a written **Answer** to respond to the lawsuit, it is important that you get this done within the time period allowed by your state. The Summons will tell you how long you have to file your Answer. You do not have to be an attorney to file an Answer with the court. You must file the original of your Answer with the court clerk and send a copy to the attorney for the creditor. You

should also keep a copy for your records. If possible, keep a copy that has been stamped by the clerk as filed with the date that it was filed. Your Answer is your written response to the statements in the Complaint.

In your **Answer**, you do not have to tell the entire story of your credit problems or make legal arguments. You must state whether you agree or disagree with each statement in the complaint. You should file an Answer even if you agree that you owe money to the creditor. You may disagree with the exact amount that you have been sued for. If you do not file an Answer, you may lose your chance to say how much you think you owe the creditor. By filing an Answer you also preserve your right to be notified of court hearings or future actions. Your Answer should be typed, but if you cannot have it typed, you can neatly print it by hand.

There are several main parts to an Answer. Look at the Complaint that you received. At the top of the page there is a section that identifies the name of the court where the suit was filed, the name of the Plaintiff (the creditor), the name of the Defendant (you, the debtor), and the file number that the court assigned to your case when it was filed. This part is called the **caption** of the document. The caption always remains the same on every legal document for that case. Even if a word is misspelled or parties are added or removed, the caption remains the same. Please refer to the Forms chapter of this book for a sample Answer.

After the **title** Answer, the next part of the Answer is called the **body**. It can contain several different parts. The first part of the Answer should consist of a sentence or paragraph either admitting or denying each part of the Plaintiff's complaint. If you cannot admit or deny a statement, you can state that you do not know whether the statement is true or not. For example, you may not know the address of your creditor or the collection agency; you can state that you do not know whether or not the statement is true and therefore you deny the statement. After you have admitted or denied each of the creditor's statements, you can list your **defenses** to the lawsuit.

What are your defenses to the lawsuit? You must apply the applicable law to the facts of the case to determine what defenses are available to you. Defenses can be things such as an argument that the statute of limitations has run or tolled. Each state has set a time limit for a creditor to file a lawsuit against a debtor to collect a debt. These time

limits may be different within a state based on the type of account that is the subject of the lawsuit. The types of accounts include whether or not there is a written contract or promissory note or if the account is an open account such as a revolving credit card. If the time limit has expired (the legal expression is the statute of limitations has run or tolled), then the creditor cannot collect the account and the court will dismiss the suit against you.

Another defense that you may want to state could involve fraud. If you did not open the account or sign the contract that you are being sued for, then you have been a victim of fraud and should include that as a defense to the lawsuit. You must state specific facts if you feel that you have been the victim of fraud. For instance, if you have a copy of the contract that the creditor says you signed and it is not your signature, you must state specifically, the signature on the contract from the creditor is not my signature. Additionally, you must execute an affidavit of forgery stating that you did not sign the contract. You must sign the affidavit and have it notarized by a notary public in your area. I have included a sample affidavit of forgery in the Forms chapter of this book.

If you are being sued after repossession and sale of personal property such as a vehicle, you could have many defenses based on the facts of the repossession and sale. I have listed these defenses in greater detail in the chapter of this book titled Vehicles.

There are other "catch-all" defenses that you may want to add in your Answer. These include things such as the complaint fails to state a claim upon which relief can be granted. You are not likely to be able to use this defense because most collection lawsuits are very straight-forward and leave little doubt about the relief that is sought. Another defense that may apply to your case is lack of personal jurisdiction. Jurisdiction involves the place in which the lawsuit has been filed. According to the Fair Debt Collection Practices Act, a creditor must file a lawsuit in one of two places; either where the defendant resides or where the defendant signed the contract that is the subject of the lawsuit. If you have been sued somewhere other than one of these places, you should put that statement in your Answer and ask for the case to be dismissed. For legal purposes, the place involved is the county in your state where the suit is brought. Consequently, if you live in County A, signed the contract in County A, but were sued in County B, the creditor has filed the suit in the wrong place. This is true even if you happen to live

closer to the courthouse in County B than the courthouse in County A. How does this happen? It may actually be difficult for a creditor to determine what county you live in. Often, mailing addresses for one town can actually be located in two counties and it can be difficult to get the correct county for a defendant's address.

You may also want to include a **counterclaim** against your creditor in your Answer. A counterclaim is a claim against your creditor that arises out of the same transaction or occurrence that you are being sued about. For example, if you are being sued for a debt for the purchase of an appliance of automobile that was defective and injured you, any claim you want to make with regards to that item must be stated in your answer. Additionally, if the plaintiff or their attorney violated a rule in the Fair Debt Collection Practices Act (see the chapter on Collection Agencies) you could include that as a counterclaim also. If you truly have a valid counterclaim you may want to consult an attorney for representation. If your damages are severe, an attorney may agree to represent you on contingency and accept a portion of your recovery as his or her fee.

The final section of the Answer is reserved for your signature and address. Sign your name, write the date and print your name and address. Be sure to use an address where you know you will receive mail because this is the address that the court will use to send you notifications of court hearings. The court is only required to send you notice, it doesn't have to make sure you received it, so make sure that you have a reliable address for notices.

Another optional part is called the **Certificate of Service**. This is another section where you will state that you mailed a copy of the Answer to the other party (in this case the attorney for the creditor) and sign and date when the Answer was mailed. There is an example of a certificate of service in the Forms section.

The last thing that you need to know is what to with your Answer once you have prepared it. As I stated earlier, you need to file the original with the court clerk and mail a copy to the attorney for the creditor. You must also keep a copy for yourself. I would recommend taking a copy with you to the clerk's office and asking that the clerk stamp your copy with their date filed stamp so that you will have an official record of the date the Answer was filed. This is called a stamped copy. The copy that you send to the attorney for the creditor does not have to be a stamped copy, but if you are able to send

them a stamped copy that is proof to the attorney that you have filed the Answer and he must treat the case accordingly. If you do not live close enough to the courthouse to file your Answer in person, you can mail it to the court clerk along with a cover letter asking that the Answer be filed. If you include a copy of the Answer and a self addressed stamped envelope, the clerk will send you a stamped copy of the Answer.

What should you do if your time limit to file an Answer has expired? If there has not been a judgment entered, file your Answer as soon as possible. Most courts will treat an Answer that was filed late no differently than any other Answer so long as there has not been a judgment entered.

SUMMARY

- Style the caption of your Answer properly
- Include all defenses to the lawsuit that you have in your Answer
- Be sure to sign your Answer
- File your Answer with the court, retain one copy for your records and mail another copy to the attorney for the creditor

Making An Initial Court Appearance

Probably the most intimidating aspect of representing themselves to non-attorneys is appearing in court, especially for the initial appearance. The old saying that only attorneys like to go to court is probably true. However, this does not mean that non-attorneys cannot make a good impression on the court and successfully represent themselves. It is important to remember that you will be at a disadvantage when you oppose a licensed attorney in court. However, if you do have the facts on your side, you have a good chance of being successful. In this chapter I will outline the basic things to remember when you first appear in court; the next chapter will deal with what will actually happen if you elect to have a hearing or trial of your case. Every court has court rules that set down the rules of behavior for attorneys appearing in court. If you can follow the following advice so that you also follow the rules for attorneys, the court will be more sympathetic to your case.

The first thing to do is to dress as neatly and professionally as possible. You do not have to wear a suit and tie, but if you do that is all the better for you. As one of my law school professors maintained, attorneys dress in uniforms and the further away you are from their uniform the more obvious is the difference in your court experience. Do not wear shorts or hats in a courtroom. Some Judges will expel you from their courtroom for these items. If possible, wear something other than blue jeans. Basically, dress as if you were attending church or a funeral. This shows respect for the court and the justice system. It never ceases to amaze me what some people will wear to court. I have actually seen women appear in court with curlers in their hair! If you are not going to take curlers out of your hair for court, when will you take them out of your hair?

Show proper respect for the Court. Another thing that continually amazes me is how little respect people show for the Judge. This is the person who will ultimately determine the fate of your case. Do not speak when the Judge is speaking. Address the Judge formally as Sir or Ma'am or Your Honor. Whatever you do, do not raise your voice at the Judge. Do not snicker or make faces at the Judge that could be taken as a lack of respect. Always stand when you are addressing the Judge or if the Judge has addressed you. I do not understand what people are thinking when they see the attorneys standing to address the Judge and yet they remain seated. Do they think that the attorneys just stand so that everyone can see them? Standing also has a practical reason. Most Judges are seated behind a large bench and elevated from the rest of the room. It can be confusing to them to determine who is actually addressing them if you are not standing.

Will there be a continuance or immediate hearing? At your initial court appearance, one of two things will happen. If the case has been previously set for a trial setting, you must be prepared to proceed with the trial at that time. If the case is set for a docket call or preliminary appearance, your case will be called and you will be asked if you dispute the claim and want a trial setting. At this time, the Judge will ask the clerk in the courtroom to give him a trial date that is agreeable to you and the creditor's attorney. It is very easy to determine if your initial court date is for a trial or not. All you have to do is ask the court clerk if you need to be ready for trial or if you can get another date. The court clerk is very concerned with making the court run smoothly and will be glad to

tell you if you need to be ready to proceed on that date or at a later date. If you are going to get a continuance from the court, I would recommend that you ask for as much time as possible. Most courts have a calendar that they like to maintain and will not give you more than two to four weeks for a continuance, but you may be able to get more time. If you think you may consult an attorney to assist you in the case, now is the time to report that to the court.

Important Note – Often, the creditors attorney will want to discuss the case with your at the initial court appearance. This can work to your advantage if you obtain information from the attorney regarding the facts of your case. However, be aware that the skill of the collection attorney is at its best when he or she has a debtor in court. It is very easy to talk people into agreeing to judgments when you have them in the courtroom. I have done it so many times it is unbelievable. If you feel that the attorney is working toward this, do not be rude to the attorney, just tell them that you have reviewed everything and you do not feel that you owe the money and want to have a hearing on the case. If you are rude to the attorney, this can actually cause you problems later on because the attorney could put your case off until the end of the docket or worse, put a mental check mark by your name and make sure that he goes all out to get a judgment on you. It is much better to try to make the attorney sympathetic to your case by speaking calmly and rationally to him or her rather than saying exactly what you feel and having them remember you always as the one they want to get someday.

ACTION STEPS FOR INITIAL COURT APPEARANCES

- ✓ Dress neatly and appropriately for court
- ✓ Show proper respect for the Judge at all times
- ✓ Stand when you address the Judge
- ✓ Speak to the clerk or other court personnel before court to determine if you are expected to try your case on that date or if you will be granted a continuance
- ✓ Do not allow yourself to be persuaded into agreeing to a judgment by the creditor's attorney

To Try Your Case Or Not To Try Your Case

This chapter is the most important chapter in the book and actually contains the information that motivated me to write the book. **The main secret that your creditors don't want you to know is that if you appear in court at a trial of your case, there is a greater than 50% chance that the creditor will not send a representative and you will automatically win the case.** It is purely a matter of economics for the creditor. Often, it is simply cost prohibitive to send a representative to court for a trial. Sometimes, the creditor simply doesn't have the staff to be able to spare someone to be out of the office for a full or half day to testify at a trial. I would recommend that even do you are not sure whether or not you actually want to have a trial of your case that you request one as soon as possible. This is what all attorneys do unless their client instructs them otherwise. You can always settle the case later by dropping your dispute and agreeing to a judgment. However, if you do not initially ask for a hearing, you may loose your chance to do so forever. I cannot stress the importance of this enough. **Ask for a trial or hearing of your case as soon as possible.**

You do not need to be overly aggressive about the request; merely state to the attorney for the creditor and the court that you would like to have a trial of your matter. This will enable you to buy more time to either prepare your case or work out a settlement. Additionally, if you are in a situation where your case will have to be continued for trial, you can pick up clues from the creditor's attorney as to the likelihood of the creditor pursuing its claim and sending a witness to trial. The creditor's attorney will never admit to you at first that his client will not pursue the claim. To do this would be malpractice on the attorney's part. However, you can observe the attorney – chances are if he represents more than one creditor some of the trials get scheduled much more quickly than others. Additionally, you can wait until after court is over and discuss your case with the attorney. All of the creditor's attorneys would prefer that you speak with them regarding your case. Not only do they feel that there is a chance they can work out your case with them, they want to get a feel for what your defenses are, if any, whether or not they should even ask their client to come to court for a trial, and whether or not you will appear again at a trial setting. If you are able to observe the attorney at all and speak with him, you are likely to pick up on the fact that trials with some creditors will stress

him out more than trials with other creditors. There is a good chance that it is due to the fact that the creditor will not send a representative to appear in court to pursue the claim.

What happens if you ask for a trial, go back to court on the trial date and the creditor has sent a representative to be a witness for trial? Well, this is a good opportunity for you to discuss your case with the witness and determine if you want to proceed or not. While the creditor's attorney does not have to allow you to speak with the witness, they will most likely allow it because they want the witness to hear what you have to say before court so that they will not be surprised to hear from you for the first time during the trial. At this time, if after discussing your case with the witness, you decide to agree that you owe the debt and do not want to proceed with a trial, no one will be unhappy with you if you tell them this fact and proceed to settle your case. Often you may be able to get a discount for agreeing to settle the case at court even if you do not have a defense at all against the claim. This is because both the witness and the attorney have more important things to do than waiting around all day for this trial and it is worthwhile to them not to stay for a trial.

What happens if you ask for a trial, go back to court on the trial date and the creditor has not sent a representative to be a witness for trial? This is your lucky day! Most likely the attorney will not proceed and will dismiss the case with the court. However, sometimes the attorney may either ask for a continuance or may try to proceed without a witness. If the attorney asks the Judge for a continuance, calmly explain to the Judge that you have prepared for a trial for that day, if you have taken off work to be at Court be sure and tell the Judge this fact, and if you have witnesses that have agreed to appear at Court and are present on that day. All of these things will weigh in your favor and unless the creditor has a legally sufficient reason for their absence such as a death in the witness' family or illness or hospitalization, the Judge will probably not grant a continuance.

Sometimes the creditor's attorney will attempt to prosecute the creditor's case without a witness. The attorney has a good chance at being successful if the debtor is not prepared for this situation. In order for any Plaintiff to win their case in court they must show by a preponderance of the evidence that their claim is valid. The most common way this can be accomplished is for the creditor to send a witness who is

qualified to testify about the business records of the creditor and who then proceeds to testify as to the validity of the claim against the debtor. They must qualify any written documentation that is submitted to the Court as evidence as business records of the company. Then, they must sufficiently explain these records to the Court to show that there is a valid claim or debt, the amount of the debt, and that the Defendant still owes that debt to the Plaintiff.

If there is no witness from the creditor, the attorney may attempt to prove the creditor's case by questioning you, the Defendant regarding the debt. Basically, he will attempt to get you to admit that the debt is valid, the amount of the account, and that the amount is still owing. While you cannot commit perjury and lie on the witness stand if you know that you owe a debt to the creditor, you can honestly tell the Judge if you do not know the exact amount of the debt. The Judge may ask you what amount you believe that you owe. If you believe that you do owe some of the debt, be prepared to tell the amount that you believe that you owe. If you are never asked how much you believe you owe, do not volunteer this information. No matter what happens, after the creditor's attorney is finished questioning you and you have returned to your seat, you should tell the Judge that you would like to make a **Motion to Dismiss** based on the Plaintiff's failure to bear its burden of proof and it failure to provide a witness for you to cross-examine. Sometimes if it is a small claims court, the Judge will arbitrarily decide that you do indeed owe the debt and will award the Plaintiff a full or partial judgment. However, more often than not your Motion to Dismiss will be granted and the case against you will be dismissed.

SUMMARY

- You should ask for a trial because the creditor may not send a witness
- If the creditor does not send a witness, the case against you may be dismissed
- The case may be tried without a witness for the creditor; if so, make a Motion to Dismiss

Your Trial

If your case is being heard in your state's trial court, the creditor's attorney may take certain **pre-trial actions** you need to be prepared for. The first of these could be discovery in the form of **Interrogatories** or **Depositions**. **Discovery** is pre-trial actions

that can be used by one party to obtain facts and information about the case from the other party in order to prepare for trial.

Interrogatories are written questions sent from one party to the other to determine information about the case. This is probably the most common form of discovery that is used in a debt collection lawsuit. If the Plaintiff sends you interrogatories, you must write out your answers to the questions and send them back to the Plaintiff within the time allowed under the court rules. The time period is usually thirty (30) days. You must answer the questions to the best of your knowledge and belief; however, be sure not to give the Plaintiff more information than they asked for in the question. Additionally, this is your time in which you can present your side of the case in your answers to the questions. For instance, a common question might be "Did you make the charges on the credit card from Mega Credit Card Company?" If you feel that some or all of the charges were not made by you, instead of just answering No, you can say, "I did not make all of the charges in question. My credit card was stolen on June 9, 2000, and persons unknown to me made charges using the credit card. I have attached a copy of the police report regarding the stolen credit card." If there is a question in the Interrogatories that you do not understand, you can ask for more clarification of the question or state that you are without knowledge to answer the question.

You are also entitled to send Interrogatories to the Plaintiff. I would highly recommend that you do this as soon as possible. In the Forms chapter of the book I have included sample Interrogatory questions that you can use.

Depositions are another commonly used form of discovery. Depositions are verbal questions asked by one party to another, taken under oath and recorded by a court reporter. Depositions are not usually used in debt collection cases because of the expense involved in having to have a court reporter present during the deposition. However, if your creditor does have a deposition you must appear at the deposition and answer the questions as truthfully as possible. Just as with the Interrogatories, if you do not understand a question, you can ask for clarification or state that you do not have the knowledge to answer the questions. You are allowed to have written documents or notes with you during the deposition to help you answer the questions.

Preparation for the Hearing

You need to be prepared to present your side of the story if the creditor provides a witness and you are unable to settle the case before the trial starts. If you have the time, it is helpful to attend court prior to your court setting and observe how that particular Judge conducts trials in his court. Following are some basic guidelines for preparing for your court date:

- Bring all documentation. You will probably only get one chance to present your documents to the court. Courts generally put a lot of weight on written documents. You need to bring anything that you have that relates to the account or debt in question. If possible, make extra copies of the more important documents. During the trial you will need to show them to the Judge and the creditor's attorney, and it is helpful if you have another copy to refer to.
- Bring all possible witnesses. Witness testimony is also important to the Judge. This is especially useful in situations where you may have a complaint about the item that is the subject of the debt. For example, if you have a dispute based on the mechanical problems with a vehicle, you would need to bring a mechanic along that is familiar with your vehicle and its problems. Be sure to prepare questions to ask your witnesses during the trial which will allow them to assist you in presenting your case to the Judge.
- Outline the events relating to the debt in chronological order. This will be extremely helpful to you when you are explaining them to the Judge. Remember, the Judge does not know anything beforehand about the case. You must start at the beginning and tell your story as clearly as possible.
- Organize, Organize, Organize. If possible, prepare a list of points you want to make to the Judge and a list of documents you want to show the Judge. The Judge will be much more likely to be sympathetic to your side if you are organized in your presentation.

Conduct of the Trial

If you watch much television these days, you have a basic idea of how a trial is conducted. The one thing to remember is that television Judges are a lot more

tolerant of courtroom behavior than real Judges. Whatever you do, you must show respect for the Judge. Do not speak when he or she is speaking. Do not address the creditor's attorney when you are explaining your case – you must address the Judge. While you can state your case forcefully, do not raise your voice or use improper language during the trial. Following are the components of a trial and what is expected of you during them:

1) Opening statements. Sometimes the creditor's attorney will forgo opening statements. If the attorney does this, I would recommend you do the same. Often in small claims courts the Judge is impatient to move along and the opening will only irritate him. However, if an opening is used, merely use it to **briefly** state that you feel you do not owe the debt and why you do not owe the debt. Generally it is a good idea not to use any more time with your opening than the Plaintiff's attorney used.

2) Plaintiff's proof. This is when the Plaintiff will present its proof to the court in the form of witness testimony and/or document presentation. You are allowed to cross-examine the witnesses after the Plaintiff's attorney is finished questioning them. You can only ask questions that are within the scope of the questions that the creditor's attorney asked. If you did not understand something that the witness said on the stand, now is the time to ask them about it. At this time you cannot testify yourself about your defense.

3) Defendant's case. This is your time to present your case to the Judge. It is probably best if you take the stand first and explain your story to the Judge. At this time you would want to present any documentation you have. The creditor's attorney will have the opportunity to question you regarding your testimony. After you have finished, if you have any other witnesses, you would call them to the stand at this time and ask them the questions that you prepared in advance. The creditor's attorney will be able to question your witnesses also.

4) Closing arguments. This is when the creditor's attorney and you are each afforded the opportunity to make a summary statement of the case and even

> argue how the law should be applied to the case. I would advise that you simply prepare a simple statement to make to the court that reiterates what you have presented to the court during your testimony. You will not likely sway the Judge during this time and you can actually irritate him or her by grandstanding and taking too long to make your statement.

Now, I know what you are thinking, "What about when all those attorneys jump up on television yelling 'Objection!' and the Judge either grants or denies their objections?" Well, there is no way that I could adequately cover all aspects of the admissibility of evidence and the art of making objections during this book. What they don't show on television is that not only does the attorney have to say 'Objection!', they also have to tell the court the basis for their objection, often even the exact rule of evidence that it is based upon. Needless to say, attorneys spend large amounts of time on evidence in school, along with years of self-education after law school learning to make objections. Even so, often the objections are overruled by the Judge and only serve to irritate the Judge. Therefore, I do not recommend that you attempt to make objections during your trial.

Congratulations, you made it through the trial! If the facts and the law were on your side, there is a good chance that you won and beat the evil creditor. What happens if you did not win and a judgment was entered against you? Every state has a different time period before the judgment is made final. This is the time allowed for parties to **appeal** the judgment. If you are in a small claims court, you would probably appeal to the trial court of your state. This procedure is normally very simple and accomplished by filling out a form with the clerk's office. There is probably a fee for the procedure. The most important thing to remember is that if you appeal your case and do not win at the next level, the court costs can be quite high, sometimes several hundred dollars or more. However, if you lost your case because a key witness was not able to attend for you or you were missing some documentation that you know will be available later, it would be to your advantage to appeal. You can also use the appeal process to prevent execution for a while, as the creditor must then proceed accordingly to obtain a judgment.

However, if you are already in your state's trial court, you would have to file your appeal with the Court of Appeals for your state. This would probably be cost prohibitive

to you, as the court costs are much higher and there may also be a requirement that you post a bond for the amount of the judgment in order to appeal. Additionally, appealing to the Court of Appeals does not always prevent execution. You must check on your individual state's law to determine the appeal process. I would not recommend filing an appeal with the Court of Appeals without the aid of an attorney.

Chapter 8

Prevention of Attachments, Executions and Garnishments

If you are lucky, you have never heard of **attachments**, **executions** and **garnishment**. If you have not been so lucky, you may have had to deal with these actions in the past. I am going to give you some information now on steps you can take to prevent your creditor from being able to take these actions against you.

The most powerful way to prevent collection actions by your creditor is by claiming full use of your state's **statutory exemptions**. To find out exactly what your state's exemptions are, you can ask a local attorney, research them in your local law library (usually in the nearest courthouse or law school), or ask the court clerk if they have a list of the exemptions. One state that I practice requires that the state's exemptions be listed on the civil warrants that are used in the court that is most commonly used for debt collection cases. The best way to claim your exemptions is to file a list of all property you claim as exempt with the court clerk. I have included a sample form for this in the Forms chapter of this book.

The fastest way to prevent a judgment creditor from filing an attachment, execution or garnishment against you is to **seek protection of the bankruptcy court**. I have discussed bankruptcy in more detail in the bankruptcy chapter of this book.

Ask your court to set up a **payment plan** for your judgment. Most states have a provision in their statutes that gives the court the power to order a payment plan that prevents the creditor from taking any other collection actions so long as the debtor continues to make their payments timely. The easiest way to find out if your state has such a provision is to ask the court clerk. Some states even have a form for you to fill out to request the court to set up a payment plan. There may be a small court cost for filing the request and the payments usually have to be made to the court clerk. If you are able to make such a request or motion to the court, be prepared to testify and show documentation regarding the amount of your income and your expenses to the court.

Aside from utilizing these above listed legal avenues to prevent actions by your creditors is there anything else you can do? Well, there are lots of things you can do to protect your assets from your creditors if you are willing to structure your life around

them. First of all, you could avoid having a bank account. Unless your bank account is covered under your state's exemption laws (and it may be up to a certain amount) any type of account that you have in a bank is subject to attachment by your creditor. It never ceases to amaze me that some debtors will continue to use the same bank account even after it has been attached once and totally emptied. While it may be very inconvenient to you to not have a bank account, the risk of having your account attached may far outweigh the inconvenience.

Consider listing your assets in someone else's name. You could go so far as to have your real property titled in your spouse's name only or even a child or parent. It is easy to transfer your vehicle to someone else's name, also. Just make sure that if you do make such a transfer, the person you transfer the property to does not have any judgments against them.

While I have pursued debtors who continually changed jobs to stay one step ahead of their creditors, I would not recommend doing that. You could find one day that you have created a job history that makes you very undesirable as an employee.

ACTION STEPS TO PREVENT ATTACHMENTS, EXECUTIONS AND GARNISHMENTS:

- ✓ File your exemptions as allowed under your state's law
- ✓ Seek bankruptcy protection if necessary
- ✓ Request that the Court set a payment plan
- ✓ Avoid bank accounts
- ✓ Place assets in another person's name

Chapter Nine

Divorce And Your Credit

As many people have found out, divorce can wreak havoc with your credit. If you married before you established your own credit identity, most of your credit is jointly held with your spouse. Chances are good that even though the Court has decreed that you are no longer married, you still have creditors who consider you and your ex-spouse as legally obligated on the debt. I have found that most divorce attorneys do not explain what happens to their client's credit accounts after a divorce. I will explain through the following examples.

Most states provide for an uncontested divorce to be settled between the parties by the filing of an agreement that divides not only the property but also the obligations between the two parties. It is common for the parties to split up the debts – the wife takes one car and will make the payments and the husband takes the other car and the payments. Usually both parties signed the contracts to purchase each vehicle. What happens to the ex-wife if the ex-husband defaults on the payments and the car is repossessed? She can be held liable for the remainder that is still owed on the contract. However, she does have the same rights to be notified and redeem or reinstate the debt as outlined in the chapter in this book on vehicles.

Another common scenario takes place with credit cards. These accounts may also be divided between the two parties even though the accounts may be held jointly. After the divorce, the spouse that retained the credit card by agreement may keep using the card and increase the balance dramatically. If that spouse then defaults on the debt or files bankruptcy and discharges the debt, the ex-spouse can be held liable for the new, higher balance on the card. Even if the balance was only a fraction of what it currently is when the divorce was granted, the spouse that never used the credit card again can be held liable for the entire amount.

Credit reports are another problem after divorce. Suppose that you still have joint accounts after divorce and your ex-spouse is having a hard time financially. They have not totally defaulted on their accounts, but are continually sixty to ninety days past due. If you attempt to apply for credit and your potential creditor reviews your credit report,

they will see these accounts with poor payment records and will attribute those payment records to you.

What can you do to prevent these problems?

If you are not yet divorced, you can make sure that you sever all credit ties with your spouse before your divorce is final. Just as you are severing your marital ties, you must also sever your credit ties as well. If you have joint credit card accounts, you must insist that they are closed. One option that may be available is to have a credit card balance transferred from a card in one spouse's name to another card in the other spouse's name. If you have joint accounts that are secured, you should insist that the spouse who is going to retain the property must refinance the account in his or her sole name. If this is not possible, you should try to retain the property yourself to make sure the payments are made timely. Even if this means making sacrifices in the settlement, it will be worthwhile to you to do this. You cannot see into your ex-spouses future and even if he or she makes a good income at the time of the divorce, they could lose their job or marry someone who has financial problems that create problems for them as well.

If you are already divorced, it is never too late to remedy any problems that may have arisen. The first action you should take is to review your credit report as soon as possible. If you see any delinquent accounts on which your ex-spouse is a co-debtor you can try and contact the creditor to learn the entire history of the account. Then you have a choice of contacting your ex-spouse about the delinquency or just paying the account yourself. Even though it may be the hardest thing for you to do to make payments for them, if you are concerned about protecting your credit it could be your only choice. If your spouse has a vehicle that you co-signed for, you have an even greater responsibility to keep up with the status of the account. Often if you contact the creditor and tell them that you are the co-signer and you are concerned about the status of the account the creditor will notify you as soon as a payment is late. Otherwise, you may not know that the account is delinquent until it is thousands of dollars in arrears and the vehicle has been repossessed. This advice holds true for home mortgages, also. If your ex-spouse retained the home and was unable to refinance it in their name alone you should make sure the mortgage company has your contact information so that you can be notified of

any delinquency before the arrearage is so large that you cannot reinstate the mortgage to prevent foreclosure.

Divorce and Bankruptcy

What happens if your ex-spouse files bankruptcy? If they have obligations to you for child support and alimony, those cannot be discharged or reduced in bankruptcy. In fact, you may be better off if your ex-spouse discharges other obligations because they will be better able to pay the child support and alimony. However, if you have joint obligations and your ex-spouse files bankruptcy, several things can happen.

If your ex-spouse files **Chapter 13** bankruptcy you are protected from action by the creditor under what is known as the co-debtor stay. Just as someone filing a Chapter 13 is protected from action by creditors under the automatic stay, that person's co-debtors are also protected under a stay known as the co-debtor stay. If the creditor is not happy with the way they are being treated in your ex-spouse's bankruptcy plan, the creditor will have to ask the court to lift or terminate the co-debtor stay in order to take any action against you. Therefore, if you find out that your ex-spouse has filed a Chapter 13 bankruptcy, it is in your best interest to find out if they intend to fully pay any joint debts that you still have together. Often people will agree to pay for debts during divorce negotiations knowing that they will file bankruptcy as soon as possible to get out of paying the debt. You can easily wind up with debts to pay that your ex-spouse is no longer legally obligated to pay the creditor. However, it is possible for your ex-spouse to fully pay a creditor through a Chapter 13 bankruptcy plan while you enjoy protection from the creditor because of the co-debtor stay.

If your ex-spouse files **Chapter 7** bankruptcy there is nothing to prevent the creditors from proceeding against you as soon as the bankruptcy is filed. Whether your ex-spouse intended to do so or not, they have effectively "stuck" you with the debt. Just as in a Chapter 13 bankruptcy, a Chapter 7 bankruptcy cannot be used to discharge obligations for child support and alimony. One of the most dangerous aspects of your ex-spouse filing Chapter 7 bankruptcy can involve mortgages. Even if you agreed to pay the mortgage on your home through your divorce settlement, if the lender finds out that one party filed Chapter 7 and has discharged their obligation on the mortgage, most notes

provide that the lender has the right to place the loan in a default status and call the entire loan due. While this may not happen to you, if the creditor feels that there is a good chance that you will be unable to pay the mortgage on your own, it is a real possibility.

ACTION STEPS TO PROTECT YOUR CREDIT DURING DIVORCE

- ✓ Divide debts before divorce by refinancing accounts in individual names
- ✓ If your spouse cannot continue payments on secured loans, either retain the property yourself or make the payments for your ex-spouse
- ✓ Review your credit report often to determine if any joint accounts are delinquent
- ✓ Contact creditors on joint accounts and ask that they keep you informed of the status of the account

Chapter 10

Automobiles and Repossessions

More money is lost by consumers during automobile transactions than any other personal property purchase. Many laws have been developed to protect consumers not only when purchasing an automobile but also after default and repossession. In this chapter I will cover the basics of what to consider when making a purchase and what to do if you find yourself unable to keep up your payments.

Purchasing A Vehicle

As Americans, so much of our self-esteem and personal identity is wrapped up in our automobiles. Throughout my years of practice as a collection attorney I handled literally thousands of actions to collect automobile loans and deficiencies. I have reviewed the purchase transactions in a good percentage of those cases. The biggest mistakes that I have seen consumers make are paying too much for used vehicles, buying new vehicles that immediately depreciate below what is owed on the loan, and simply buying a car that they cannot afford.

In this information age there is no reason that someone cannot learn the average market price of any used car. Several websites are available that will give values of vehicles. A couple of the best ones are **www.kbb.com** (Kelley Blue Book Used Car Values) and **www.nadaguides.com** (National Automobile Dealers Association). If you do not have access to the internet the next best alternative is to compare prices by shopping around and reviewing all the advertisements in your area for the make and model vehicle that you are considering purchasing. People that live in less populated areas do have fewer options, but there are always things you can do to find out another person's opinion of a car's value. If you have a local bank or credit union you can always call them and ask what they show as the value of a vehicle. Usually, they will not have values for cars over seven years old, but they may be able to help you find a value on an older vehicle. You can ask another car dealer what they would sell a particular car for if they had it on their lot. Always remember that automobiles do not have set values. The value of an automobile is simply what someone will pay for it. If you can obtain

financing on your own from a bank or credit union you will save money if you purchase a car from an individual rather than from a car dealer.

Often when people purchase a new vehicle with little or no money down they are immediately "upside down" on the vehicle when they drive it off the dealer's lot. When someone is "upside down" on a loan it means that they owe more on the loan than the vehicle is worth. One way to prevent this from happening is to estimate the value of the vehicle that you are purchasing once it is classified as a used vehicle. You can do this by researching the sites I previously listed for used cars of the same year that you are purchasing. Of course if you are considering buying a car at the beginning of a model year you will not be able to find out this information and will have to use information from the previous year. If you want to make sure you are not upside down on the vehicle after you purchase it, make sure that you can pay a large enough down payment so that you do not owe as much on the loan for the vehicle after purchase.

People often become upside down on new vehicles because they fall into a car dealer's marketing trap when the dealer advertises "No matter how much you owe on your car we will pay it off." This may be true that they will pay off your vehicle, but they will do so by adding the balance that you owe on your old car to the financed amount for your new car. You are then still paying for a portion of your old car with your monthly note for the new car.

Another common trap that people fall into is simply buying a vehicle that they cannot afford. Just because the credit company or bank will approve you for a loan for a certain amount or kind of car does not mean that you have to spend the entire amount or even that you should. Perhaps you are at a point in your life when you do not have many bills and therefore are able to afford a high car payment. However, remember that circumstances can change and you may find yourself with more expenses and a high car note weighing you down. It is always better to leave yourself room in your budget than to tap yourself out every month.

Repossessions

If you do get behind on your car payments, there is a very real possibility that your car will be repossessed. There are several things you need to be aware of in dealing with the possibility of a repossession of your car.

- Creditors have the ability to take advantage of **self-help repossession** which means that they can send someone out to pick up your vehicle from virtually anywhere, even your driveway, so long as there is no breach of the peace. The "repo man" cannot use force against you to take the vehicle in any way and cannot enter into a locked garage or behind a locked fence, but he can go onto an open driveway to take the car back.
- If your car is repossessed, the creditor is obligated to give you notice of the repossession which will give you notify you of your rights in getting your car back. Depending on the state in which you live, you may be able to simply reinstate your loan by catching up your delinquent payments and the costs involved in the repossession. However, many states allow creditors to require that you redeem the vehicle by paying the loan off in full to get the car back.
- If you cannot afford to get your car back, the creditor will sell the vehicle, deduct the amount they sold the car for from the remainder on the loan, and hold you liable for what remains. This is called a **deficiency balance**.
- Often creditors will attempt to talk people into **voluntary repossessions**. Many debtors will say they "turned the car in" and believe that if they do this they are not liable for the deficiency balance. This is not true. Even if you voluntarily surrender your car to the creditor, you will be held liable for the deficiency balance.

The creditor's obligations in repossessions – Creditors have a series of obligations they must follow throughout this process. If they do not meet their obligations, this will often give you a defense to the liability of the deficiency balance.

The first obligation that the creditor has is to make sure that there is no **breach of the peace** when the vehicle is repossessed. What qualifies as a breach of the peace is open to interpretation by each state. As stated earlier, a "repo man" cannot enter a locked garage to get a car. They also cannot take a car if the debtor is present and simply tells them not to take the car. The repo man cannot use bodily force or threats to seize a vehicle. However, if this happens, you should not meet force with force. Simply tell the repo man that you are going to call the police and report your car stolen as they are taking it over your objections.

Once the car is repossessed, the creditor has the obligation to tell you where your car is being held so that you can get your personal belongings that were in the car back. Additionally, the creditor has to give you notice of either when and where the car will be sold if it is to be sold at a public sale. If the car is to be sold at a private sale, the creditor must tell you a date after which the car will be sold.

The type of sale that the creditor can use to sell the vehicle is governed by each state's version of the Uniform Commercial Code. These are the laws which govern the sale of collateral to satisfy a loan. The sale must be a commercially reasonable sale which means that it must be commercially reasonable as to the time, manner, method and place of the sale. In other words, the sale must be one that is normally used to sell vehicles and must be intended to bring the highest price possible for the car. It is easy to give examples of sales that are not commercially reasonable. For instance, if the creditor sells the car to his brother at 50% of the "book value" for the car without advertising the car, this is not commercially reasonable. There are more minor things which the creditor may do to have a sale that is not commercially reasonable, however. If the car is accidentally advertised as having 50,000 more miles on it than it actually has, the sale is probably not commercially reasonable. If the sale is a private sale for car dealers only and yet it is not very well advertised and is only attended by a few dealers, it is probably not commercially reasonable. If you believe that there was some aspect of the sale of your car that may not have been commercially reasonable, find out everything you can about that creditor's sales to determine if the creditor made a mistake when it sold your car or if those are the types of sales the creditor routinely uses. Chances are that even if you do not think the sale was reasonable, if the creditor normally uses those types of sales, they may be reasonable. However, creditors often make mistakes and mistakes during a sale of a repossessed car may mean that you will not be liable for the deficiency.

What should you do if your car is about to be repossessed? – If you are behind on your car payments, chances are that the creditor has already informed you that they intend to repossess your car. If you are unable to bring your account current, you still have a few options to limit your damages from repossession. First of all, you can try to sell the car for the amount that you owe on the car. You should request a payoff amount from your creditor so that you know the exact amount you have to sell the car for. If you

are not “upside down” on the loan, this is a good option to protect further damage to your credit from having a repossession on your credit report.

If you know there is no possible way that you can sell your car and payoff your loan, you may want to consider surrendering the car. However, just remember that if you surrender your car, you will still be liable for any deficiency balance that may result after the creditor sells the car. By surrendering the car you are saving yourself the cost of the repossession fee (anywhere from $75.00 to $500.00 or more). Additionally, vehicles are often accidentally damaged during repossession and the costs of repairs will ultimately be paid for by you in the deficiency balance.

If you believe that your car is about to be repossessed, be sure to keep the amount of personal property in the vehicle to a minimum. Property in a repossessed vehicle has a way of disappearing and it is your word against the repo man as to what was in the vehicle. Do not believe that you can claim that you had money and jewelry in the car when it was repossessed and get whatever you claimed was in the vehicle back. It will not happen no matter what the circumstances.

Finally, if you are unable to make your monthly payments on your car and you are “upside down” on your loan, you probably should consider filing bankruptcy. If your car has just been repossessed and has not been sold yet, a bankruptcy filing will prevent the sale and get your car back for you. Additionally, as I discuss in the bankruptcy chapter, you may able to only pay for the value of your vehicle and have the remainder of the loan deemed unsecured.

What should you do if your vehicle is repossessed? The first thing to do is to go and get your personal property back. If you are able to reinstate the loan or redeem the vehicle you should negotiate with the creditor for the most favorable terms available. Most people are not able to redeem their vehicle or reinstate the loan or their car would not have been repossessed. If at all possible, look at the place where the car is being held and check the condition of the car to see if it was damaged during repossession. If it was damaged, take pictures of the vehicle. Find out where and when the car will be sold and attend the sale if it is a public sale. Basically, you are finding out as much as possible about the sale of your vehicle to give you information to fight a deficiency action if one arises. Once the car is sold be sure to get an accurate breakdown of all the costs and

expenses associated with the sale and repossession and examine the method that the creditor used to determine the deficiency balance.

Automobile Leases

Auto leases are tightly worded contracts that are seldom favorable to the consumer. If you are unable to purchase a vehicle any other way, you may want to consider a lease. However, it would be better to drive a wreck that barely makes it down the street than to get trapped in a lease with terms you are unable to abide by. It is common knowledge that leases have a set amount of miles that they allow for the life of the lease. Most people do not look at the per mile cost of exceeding the allowed mileage and are shocked to learn after a few years of the lease that they have already exceeded the allowed mileage and are subject to excessive mileage charges. In addition to excessive mileage charges, you could also be subject to early termination fees if you try to "turn in" your car before the lease is over. Most lease contracts provide for a complicated formula to determine the amount that you owe after an early termination. The formula is usually very difficult to understand and is often incorrectly applied by the creditor. Finally, many creditors have provisions in the lease contract which make you liable for even minor damage or wear and tear on the vehicle.

Chapter Eleven

Bankruptcy Basics

In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act which changed the bankruptcy code significantly. If you are considering filing bankruptcy, you should seek the help of a qualified attorney. Bankruptcy is a complicated legal proceeding and is very difficult to attempt on your own. In this chapter I will not tell you how to file a bankruptcy on your own, but I will give you information to help you determine if bankruptcy is the right solution for you, the different types of bankruptcy available to you, and how filing bankruptcy will affect you. I will start by listing some advantages and disadvantages of filing bankruptcy.

Advantages of Bankruptcy

- Automatic Stay – By filing bankruptcy, you immediately become protected by what is known as an automatic stay which stops all foreclosures, evictions, repossessions, utility shut-offs and any other creditor action. A creditor must ask permission from the bankruptcy court to take any action against you after you file bankruptcy. Some creditors will immediately ask for permission to proceed against you and some will never do so. Whether or not a creditor will ask for permission to proceed against you will usually depend on whether or not the creditor is secured and what type of bankruptcy you have filed.
- Discharge of Debt – When you successfully complete your bankruptcy case, most debts that you included in your bankruptcy will be discharged. This will eliminate your obligation to repay your unsecured debts. Your secured debts will either have been reaffirmed or paid through your bankruptcy case, or you may have chosen to surrender some of your property you no longer wanted.
- Leverage Against Secured Creditors – While you still have to pay for property that is secured, bankruptcy can give you more options in making those payments. For example, if you owe more money than your car is worth, and you have owned your car for at least two and a half years, you are only obligated to treat the amount that is equal to the value of your car as secured and the balance of the

account is unsecured. The result of this is that often you only have to pay the actual amount that your vehicle is worth. Additionally, bankruptcy can lower monthly payment amounts and interest rates.

- Prevention of Enforcement of Judgments – Even if your creditor has obtained a judgment against you, once you file bankruptcy they are no longer able to take any actions to enforce the judgment. This means that wage garnishments filed through the courts are immediately stopped. Additionally, any liens that the judgment may have created against your property can be avoided if it affects exempt property.
- Regain Driver's License – If you have lost your driver's license due to a court judgment that has not been paid, you can use your bankruptcy to avoid the judgment as an unsecured judgment lien. You may then be able to regain your driver's license.

Bankruptcy Disadvantages

- Effect on Your Credit Report – A bankruptcy filing stays on your credit report for ten years. However, if you already have poor credit, a bankruptcy will probably not damage your credit much. In fact, some creditors will be happy to see a bankruptcy discharge on your report because it will let them know that you have wiped out many debts and they are therefore more of a priority to you.
- Ability to File Bankruptcy Again – The law only entitles you to file a Chapter 7 bankruptcy every eight years. There is no limit to the number of Chapter 13 bankruptcies an individual can file; however, if you are deemed by the court to be abusing your bankruptcy rights, the court can put sanctions in place that could prevent you from filing another Chapter 13 for 180 days or more after your present case is dismissed.
- Bankruptcy May Not Solve All Your Problems – For instance, not all of your debts can be discharged under a Chapter 7 liquidation case. If you have a lot of secured property such as recreational vehicles, boats or extra cars, the Chapter 13 Trustee may not allow you to retain the property unless you pay your unsecured

creditors 100%. These are the kinds of issues that you need to discuss on an individual basis with a qualified attorney.

You may think from the above discussion that the advantages of filing bankruptcy outweigh the disadvantages so greatly that there is no reason not to file bankruptcy. However, this is not the case. You must take into consideration your whole situation when deciding whether or not to file bankruptcy including the effect of bankruptcy on each debt that you have and what you believe your future holds in the way of income and expenses.

Types of Bankruptcy

Chapter 7 (Liquidation)

Some people call Chapter 7 bankruptcy "straight bankruptcy", but the term from the bankruptcy code is liquidation. The code calls it liquidation because it was originally designed for people or businesses to sell their assets and then use the proceeds to pay their creditors a portion of the debts owed. However, most consumer Chapter 7 bankruptcies filed today are no-asset cases, meaning that there are no assets to use to pay creditors. In these situations, unsecured creditors would receive nothing on their accounts. Secured creditors will either take their collateral back, allow you to redeem the debt by paying it in full, or negotiate a reaffirmation agreement with you. A reaffirmation agreement is just what it sounds: you are reaffirming your agreement to pay for the collateral that secured the debt. Usually, the terms of the original debt are used. However, creditors do not have to agree to reaffirmation – they can demand their collateral back if you file bankruptcy. If you are delinquent on the account when you file Chapter 7, the creditor may demand that you completely catch up your delinquency before agreeing to a reaffirmation agreement. Therefore, if you are delinquent on secured debts, a Chapter 7 is probably not the best option for you.

A Chapter 7 bankruptcy is started by filing a petition for bankruptcy with the bankruptcy court. Currently, the fee for filing a Chapter 7 bankruptcy is $335.00. When your petition is filed, you will receive a date for your creditor's meeting. This is a meeting which is conducted by your Trustee that gives your creditors the opportunity to appear and question you regarding your debts and your assets. In a Chapter 7 case this is probably the only time that you will have to appear in Court. If your creditors do not

agree with the way they are being treated in your bankruptcy, they may file a Motion to Lift the Automatic Stay or even an Adversary Complaint against you. A Motion to Lift the Automatic Stay might be filed by a secured creditor seeking to regain possession of its collateral. An Adversary complaint might be filed by a creditor that feels you are discharging a debt that was obtained by fraud or other illegal means, for instance if you acquired a debt and had no means or intention of repaying the debt. Usually you would receive a discharge of your debts under a Chapter 7 bankruptcy in about six months from the date of filing.

Not everyone who wants to file a Chapter 7 bankruptcy is allowed to file one. In order to qualify to file a Chapter 7 bankruptcy, your income and other financial aspects must be entered into what is commonly called the means test. If your income puts you below the median income in your area, you can file a Chapter 7 bankruptcy. If your income puts you over the median income in your area, the bankruptcy code allows certain expenses and debts to be deducted from your income and a disposable income amount is then calculated. If your disposable income as determined by the means test is less than an amount that would allow you to repay 25% of your unsecured creditors through a Chapter 13 case, you are allowed to file a Chapter 7. If your disposable income as determined by the means test allows you to repay 25% of your unsecured creditors through a Chapter 13 case, you are not allowed to file a Chapter 7 and must file a Chapter 13 case.

Chapter 13 (Wage Earner)

Often you will see advertisements from bankruptcy attorneys that speak of debt consolidation as a type of bankruptcy. They are trying to soften the idea of Chapter 13 bankruptcy by making it sound like people are just refinancing debt. A Chapter 13 bankruptcy is similar to refinancing in that when you file, you also propose a payment plan that pays your creditors all or some of their debt. These plans can last from three to five years. How much you pay each creditor depends on a number of factors: whether the debt is secured or unsecured; the extent to which it is secured; your income level; your fixed living expenses; and other factors. The plan will also set the amount that you will pay back unsecured creditors, currently ranging from 0% to 100%. However, you cannot expect to pay your unsecured creditors a low amount, say 10%, and still keep your

fishing boat, big screen television, and all-terrain vehicle. The Chapter 13 Trustee is there to oversee your plan and take into considerations of assisting you in getting a fresh start while also preserving your creditor's interests. You will not be allowed to keep all of your luxury items while wiping out all of your unsecured debt.

The procedure for a Chapter 13 begins the same as a Chapter 7; a petition is filed with the bankruptcy court. Currently the filing fee is $310.00 and in some districts you are allowed to pay the fee in payments through your plan. You are also allowed to pay your attorney's fee in payments through your plan. The District Court where you file caps the fee that attorneys can charge for Chapter 13 cases at certain levels. Once your petition is filed, you will be given a date for your creditor's meeting. Just as in Chapter 7, your creditors are given notice and have the opportunity to attend and question you. Often in a Chapter 13 bankruptcy, creditors will attend to try to negotiate better treatment in your plan. For example, if you have a loan from a company that was used to buy furniture and is secured by that furniture, your attorney may have advised you to list the account as secured for an amount less than the balance. This is because you probably owe more for the furniture than it is worth. The balance of the account is then treated as unsecured. Since values for items such as this are not exact, the creditor may not agree with the value you have listed in your plan and may try to have that amount increased. If you do not agree to increase the amount, the creditor has the right to file an objection to your plan. Then the Court would determine the value of the collateral and set the secured amount as such.

Often you will only be required to attend the creditor's meeting and will not have to attend court again. However, if your creditors file objections to your plan, you may have to attend court when the objection is heard. Additionally, you may also have to attend court if a creditor files a motion to lift the automatic stay to proceed against you in other avenues. The most important requirement for you to do while you are in Chapter 13 bankruptcy is to make your plan payments as you proposed to the Trustee. If you do not make your payments, the Trustee will petition the Court to dismiss your case. If this happens, you may have the opportunity to appear at court to show why you fell behind in your payments. You must be able to make your payments in order to maintain a Chapter 13 bankruptcy.

Chapter 11 (Reorganization)

A Chapter 11 bankruptcy is rarely used by consumers and is most often used by corporations hoping to stay in business. However, if you are a business owner and are self employed, you may want to consider Chapter 11. Chapter 11 is similar to a Chapter 13 in that a payment plan is proposed to the Court for repayment of you debts. However, a Chapter 11 can last much longer than a Chapter 13 and is much more expensive to file. You would need to discuss your situation with a qualified bankruptcy attorney to determine if a Chapter 11 bankruptcy is best for you.

Mortgages in Bankruptcy

Mortgages receive somewhat special treatment in bankruptcy. Since they are considered long term debt that will usually survive the length of a Chapter 13 plan, a Chapter 13 case will basically split your delinquent mortgage into two debts – the ongoing payment and the delinquent amount which is known as arrearage. Your plan will provide for the arrearage to be paid in monthly payments during the life of your plan. The ongoing payment will also be paid throughout your plan at is normal monthly amount. When your bankruptcy is closed, your arrearage is discharged, but your mortgage is not. If you are not delinquent when you file a Chapter 13 bankruptcy, you will probably just choose to continue to make your monthly payments as normal to the mortgage company.

If you are delinquent when you file a Chapter 7, you will be required to reinstate your mortgage by bringing your account current. You will also have to reaffirm your mortgage just as your other secured debts. Often, people are not aware that they are delinquent or the amount that they are delinquent when they file Chapter 7, and they sometimes are not able to reinstate the mortgage to keep their house.

Taxes in Bankruptcy

Most people are surprised to learn that some taxes can be discharged in bankruptcy. The general rule of thumb is that if your taxes are three years from the date the return was due to be filed, you filed the return timely, and there has been no lien filed, your taxes may be eligible for discharge. In order to determine if your specific taxes are

dischargeable, you must consult with a competent attorney or tax professional who can examine your particular situation.

Bankruptcy Exemptions

Exempt property is property that the bankruptcy code allows each person who files bankruptcy to keep in order to aid in the debtor's "fresh start" after bankruptcy. The code allows each state to choose to set their own exemptions or to use the exemptions provided by the bankruptcy code. Currently, there are sixteen states that use the bankruptcy code exemptions. I have listed those states and those exemptions below. If you do not live in one of those states, you should contact a local attorney to inform you of your state's exemptions.

The following states allow the use of the federal bankruptcy exemptions found in 11 U.S.C. §522:

- Arkansas
- Connecticut
- District of Columbia
- Hawaii
- Massachusetts
- Michigan
- Minnesota
- New Jersey
- New Mexico
- Pennsylvania
- Rhode Island
- South Carolina
- Texas
- Vermont
- Washington
- Wisconsin

Bankruptcy Code §522: exempt property

...
(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or

a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $400 in value in any particular item or $8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,000 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $800 plus up to $7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.
(8) The debtor's aggregate interest, not to exceed in value $8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive -
(A) a social security benefit, unemployment compensation, or a local public assistance benefit;
(B) a veterans' benefit;
(C) a disability, illness, or unemployment benefit;
(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless -
(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights

under such plan or contract arose;
(ii) such payment is on account of age or length of service; and
(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to -
(A) an award under a crime victim's reparation law;
(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
(D) a payment, not to exceed $15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or
(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

These are the bankruptcy exemptions as of this writing; however, these are always subject to change.

As you can tell from this basic discussion of bankruptcy, it is a very complicated subject and I would have to advise you to seek the advice of an attorney to determine if bankruptcy is the right option for you. In my experience, I have seen quite a few people attempt to file bankruptcy without an attorney and the vast majority of them fail. Each of your debts must be taken into consideration along with your income and fixed living expenses. While bankruptcy is a good option for many people in dealing with their debt, it is a serious action that requires experienced advice.

Chapter Twelve

Your Credit Report

Your credit report is a record of what debts you have and how you have repaid those debts. If you have ever even just applied for credit, chances are you have a credit file with at least one of the three major credit bureaus. Credit bureaus are the companies that collect and print credit reports. There are currently three major credit bureaus: Experian (formerly TRW), Trans Union and Equifax. Different credit bureaus will be more prevalent in different parts of the country; therefore, your credit report with one credit bureau may be slightly different with another one. This is because of the way that credit bureaus collect information. Most creditors subscribe to one or more credit bureaus to receive credit reports on people they are considering extending credit to. Additionally, most creditors also report information on the consumer to the credit bureau, usually by means of a monthly download of information on the status of the consumer's accounts.

It is important that you periodically review your credit report to make sure there is no inaccurate information. You can obtain a copy of your credit report by calling or ordering your report online. Below are the phone numbers and websites of the three major credit bureaus:

Experian – 1-888-EXPERIAN (1-888-397-3742) **www.experian.com**

TransUnion Corporation – 1-800-888-4213 **www.tuc.com**

Equifax – 1-800-685-1111 **www.equifax.com**

There may be a cost associated with ordering your credit report. Federal law limits the cost to a maximum of $9.00 per report. Some states have laws that provide that credit bureaus must provide a consumer with one free report a year. Additionally, you can get one free report in any twelve-month period if you are unemployed and will be applying for a job within the next sixty days, are receiving public welfare assistance, or if you have reason to believe that the file at the credit bureaus contains inaccurate information due to fraud.

Fair Credit Reporting Act – The federal law that governs credit reports is known as the Fair Credit Reporting Act (FCRA) and the legal cite is 15 U.S.C. §§ 1681-1681u. The FCRA is designed to promote accuracy, fairness, and privacy of information in the

files of every "consumer reporting agency". A consumer reporting agency are the credit bureaus listed above. The FCRA gives you many rights with regard to your credit report. For instance, you must be told if the information in your credit report has been used against you, such as to deny an application for credit, insurance, or employment. You must also be given the name, address and phone number of the credit bureau that provided the information on the credit report that was used against you. Additionally, the FCRA provides that the credit bureau must provide a copy of your report to you at no charge if action was taken against you because of the credit report within the past sixty (60) days. The FCRA also provides procedures for disputing the accuracy of the information contained in your credit report. Those procedures are discussed in the chapter in this book entitled The Truth About Credit Repair.

What is contained in your credit report? Your credit report contains basic information about you such as your name, current address, past address, employment, social security number, birth date, current employer and past employer. It also contains information regarding all of your credit accounts such as the latest activity on the account, the current balance, the opening balance, and the amount past due. Each account is also coded to show if the account is current or is thirty, sixty, or ninety days past due, or if it has been charged off to bad debt. It may also show if the account was subject to a repossession or foreclosure or if the account was closed by the creditor or closed by the consumer. There is also a section for public information such as judgments, bankruptcies, tax liens and foreclosures. The last section of the report is a listing of creditors that have inquired about your credit recently.

How do you read your credit report? The best way to learn to read your credit report is to look at a sample report and instructions from the particular credit bureau where you obtained your report. Each credit bureau has a slightly different format for their reports, and you should check with the credit bureau as to the format of their reports.

Who can obtain your credit report? Federal law regulates who can look at your credit report. Of course, your potential creditors can look at your credit report whenever you apply for credit or for a loan. Additionally, creditors can look at your credit report in order to locate you if you are in default on your account with them. Also, collection agencies and attorneys can look at your credit report for location purposes. Employers

can also look at your credit report if you give them permission to do so. Many employers are now reviewing credit reports to make hiring decisions, not so much for credit history as for public record information. Government agencies may look at your credit report. These could include agencies trying to collect child support along with those determining your eligibility for public assistance. Landlords can look at your credit report to determine whether to rent an apartment to you.

Chapter Thirteen

The Truth About Credit Repair

I am sure you have all heard the claims from companies advertising that they can repair anyone's credit. This is simply not legally true. The ability to "repair credit" is based on the federal Fair Credit Reporting Act and involves disputing incorrect or old information that is present on a consumer's credit report. Anyone can exercise their rights under the Act to remove incorrect or old information from their credit report. However, no one can legally change the past and if you do indeed have past due accounts, there is no way to legally change that until they are old enough to become outdated information which can be removed from your credit report. In this chapter I have outlined the steps you can take to improve your credit report by having incorrect or outdated information deleted from your report.

Disputing Information On Your Credit Report

After you have obtained your credit report as outlined in the previous chapter and have reviewed it thoroughly, I am sure you have noticed one or two accounts that have payment histories that you did not agree were accurate. You have the legal right to correct this information. You must send a written dispute to each credit bureau that has reported incorrect information. You should also send in any proof that you have to show why the information is incorrect. This proof could be in the form of payment receipts or letters or statements from the creditor regarding the status of the account. In the Forms chapter of this book I have included sample letters to send to the credit bureau for such a dispute. The credit bureau must then investigate the information and correct it. The credit bureau is required to reply to you within thirty days. The creditor who sent the information to the credit bureau must correct and update the information in question. **If the creditor does not respond to the credit bureau to verify or update the information, the information will be deleted.** This is where the term "credit repair" has arisen.

Even if you are successful in updating or deleting information, you need to periodically check your report to make sure that the information has not appeared again on your report. Additionally, you must go through this process with each of the credit

bureaus that has information on you. The credit bureaus do not share information between each other, so changing your report with one bureau will not change it with the others.

Another type of information on your credit report that you can dispute is outdated or old information. Certain information must be removed from your report within a certain number of years. The procedure for removing old information is the same as that for incorrect information discussed above. Listed below are the types of information that have limited amounts of time that they can be listed on your credit report:

Collection or charged off accounts – 7 years

Lawsuits and judgments – 7 years

Paid tax liens – 7 years

Criminal arrests or indictments – 7 years

Bankruptcies – 10 years

Criminal convictions – Forever

Positive information – Forever

Other Actions To Improve Your Credit Report

If you have filed a dispute with the credit bureau and the creditor has verified its information with the credit bureau, your next step is to deal with the creditor directly. You can try to persuade the creditor that its information is incorrect by supplying whatever proof you have. However, if the creditor still insists that you owe the money, one thing you may want to do is to try to settle the account with the creditor. Often creditors will settle old accounts at greatly reduced rates or set up a payment plan with you that you can afford. Then when the account is paid you can request that the creditor notify the credit bureau that the account is paid. If you have any doubt that the creditor will follow through with reporting to the credit bureau you should get the agreement in writing.

You can also send a statement to the credit bureau that explains derogatory or damaging entries. However, the credit bureau is not required to include a statement from you explaining why you were delinquent, but rather why you feel that the information is incorrect. For example, if a creditor shows that you were ninety days delinquent on an account the credit bureau does not have to include your statement that you fell behind

because you lost your job. However, if you had an agreement with your creditor to allow you to skip some payments because you lost your job and therefore it was not delinquent, the credit bureau must include such a statement.

Do Not Be Misled By Creditor Threats to Damage Your Credit

As we discussed earlier, creditors routinely report the status of accounts to the credit bureaus. Therefore, any threat by someone attempting to collect an account from you that they can damage your credit is simply untrue. The fact is, if you have a delinquent account, your credit has already been damaged. In fact, most collection agencies are not credit reporting agencies and cannot even send reports to the credit bureaus. The derogatory or damaging information has probably already been sent to the credit bureaus by the creditor itself. These threats may even be illegal under the Fair Debt Collection Practices Act and could result in compensation for you. You should consult an attorney to determine if you have an action under this law.

Do Not Use Credit Repair Agencies

As I stated earlier, anything a credit repair agency will do for a fee, you can do for FREE yourself. Furthermore, what the credit repair agency suggests you do may actually be illegal and make your situation worse. Some credit repair agencies actually suggest that you create a new identity by confusing the credit bureaus so that they create a new file for you. If the intent in doing this is to defraud creditors (what other intent could there be?), then this is illegal. If you feel that you have already been ripped off by one of these credit repair agencies you should contact an attorney as soon as possible. If the agency violated federal or state law you could have a cause of action against them.

What about all those companies that promise to lower your interest rates and settle your debts for less than the balance? If you are already behind on your accounts and the accounts have been forwarded for collection, the creditors will not lower your interest rate. If the creditor is willing to settle your debt, they are more likely to do so with you and not with an agency or some kind of debt consolidation or debt counseling company. Furthermore, if your account is with a collection agency or attorney, the Fair Debt Collection Practices Act forbids the agency or attorney from speaking with a third party such as one of these companies without your written permission.

There are other problems with these types of companies when it comes to making your payments. Just because you sent the company your money does not mean that they have forwarded it to your creditors. You must keep track of their payments to your creditors to see if they total the amount that you are paying them. All you are basically doing is paying a company to send your payments to your creditors for you.

What about using one of those non-profit companies to deal with your creditors? While the company may have good intentions, the same rule applies to non-profit companies as to the others – collection agencies and attorneys cannot deal with them without your written consent. Additionally, the non-profit companies ask for a contribution from the creditor to fund their programs. I can tell you without a doubt that collection agencies or attorneys will not participate in such a program.

Be On The Lookout For Identity Theft

Identity theft is becoming more prevalent than ever in these electronic times. Chances are good that when you reviewed your credit report you discovered one or more accounts that you knew nothing about. These could be the result of honest mistakes by the credit bureau or creditor or they could be the result of identity theft. If you believe that you have been the victim of identity theft, there are several things you can do. First of all, contact the credit bureaus' fraud department and tell them you are an identity theft victim. You can also request that a fraud alert be placed in your file as well as a statement from you asking that your creditors call you before opening new accounts or changing existing accounts. Second, file a report with either your local police or the police where the theft took place. If your social security number appears to have been used by someone else, you should contact the social security office immediately. Finally, you should contact the creditors to find out if any of your accounts were opened fraudulently. Many creditors now have fraud departments that are specialized in assisting consumers who are victims of identity theft.

HOW TO IMPROVE YOUR CREDIT SCORE

Your credit worthiness is based on your credit score. However, your credit score can vary from credit bureau to credit bureau by as much as thirty points. The exact formula that is used to determine a credit score is not revealed by any of the companies that assign scores. The best way to get a high score is to pay your bills timely! This should be

obvious. But, what kind of accounts are best for the highest score? Most experts agree that you should have at least three revolving accounts such as credit cards and at least one installment account such as a car loan for a maximum score. The tricky part is that you should only use the credit cards up to 30% of each cards credit limit. For instance, if you have three cards with $1,000 limit each, you should not just have one card at $900 balance, but you should use each up to $300 balance. It is not important that you pay each card off each month, so long as you make your payments on time each month.

ACTION STEPS TO REPAIR YOUR CREDIT

- ✓ Request your credit report from all three credit bureaus
- ✓ Review all identification and account information
- ✓ Mark the identification and account information that you know is incorrect
- ✓ Mark the identification and account information that is outdated
- ✓ Gather copies of all proof that you have – receipts, statements, paid in full letters, judgment or lien satisfactions, etc.
- ✓ Mark the account information that you do not know is correct or not
- ✓ Send copies of your credit report and proof to the proper credit bureau along with one of the form letters in this book asking for the credit bureau to investigate the information
- ✓ If you do not have a response from the credit bureau in thirty days, send them the follow-up letter in this book along with copies of everything you previously sent the credit bureau
- ✓ If the credit bureau responds that the creditor verified the information, contact the creditor directly to dispute or settle the account
- ✓ Once you have resolved the account with the creditor, repeat the above process and send copies of your documentation from the creditor proving the account was resolved
- ✓ Request your credit report from all three credit bureaus every three months until you are satisfied that all possible derogatory information has been removed
- ✓ Maintain at least three credit card or other revolving accounts
- ✓ Only keep up a balance of 30% of your credit limit on each credit card

- ✓ Maintain at least one installment account
- ✓ Make your payments timely

Chapter Fourteen

Definitions

Answer – A written response to the statements in the Complaint

Appeal – Resort to a higher court to review the decision of a lower court

Arrearage – Amount of delinquency of a loan

Bankruptcy – Federal law that allows you to take care of your debts according to a set of rules while being protected from collection activity

Burden of Proof – The duty of proving a fact or facts in dispute on an issue raised between the parties in a case

Caption – The heading of the complaint that gives information about the case including the name of the court, the state, and the county in which the Complaint is filed, the names of the Plaintiff and the Defendant, the number assigned to the case by the court clerk, and the title of the particular pleading

Collateral – Property put up or pledged to secure a loan

Complaint – A statement filed with a Court telling the Judge what the problem is and what he or she wants.

Cosigner – A person who agrees to be responsible for someone else's debt

Counterclaim – A response to a lawsuit in which the Defendant raises legal claims against the Plaintiff

Court Clerk – A non-judicial officer whose responsibility is the administration of the courts as to budgets, calendars and non-judicial personnel

Court of Record – A court that is required to keep a record of its proceedings, and that may fine or imprison

Credit Bureau – A company whose business is specialized to collect and print information concerning consumer's credit activities

Credit Report – A written record of your personal information, credit accounts, and account payment history maintained by a credit bureau

Debtor – Any person who owes money to another

Default – Failing to meet the requirements of an agreement

Default Judgment – When a party against whom a judgment is sought has failed to answer or otherwise defend, he is in default and a judgment by default may be entered

Defendant – The party against whom recovery is sought in a lawsuit

Defense – A legal reason why a court should not award any or all of what has been sought in a lawsuit

Deficiency – The amount a debtor owes a creditor on a debt after the creditor seizes and sells the collateral

Deposition – Verbal questions asked by one party to another, taken under oath and recorded by a court reporter

Discharge – A document that ends a debtor's legally enforceable obligation to pay a debt, often obtained through filing and completion of a bankruptcy

Discovery – Pre-trial actions that can be used by one party to obtain facts and information about the case from the other party in order to prepare for trial

Execution – The process of enforcing a court judgment by taking property from the Defendant

Exempt Property – Property that the law allows you to keep when you are being faced with collection on an unsecured debt or property that is protected from sale to satisfy the claims of creditors during bankruptcy

Exemptions – Laws that give you the right to maintain your exempt property

Interrogatories – Written questions sent to a party in a lawsuit for the purpose of discovering information about the case

Judgment – A court order saying that you owe someone money. This can enable the Plaintiff to file liens against your property, garnish your wages, or attach you bank accounts.

Jurisdiction – The power and authority of a court to hear and determine a judicial proceeding

Motion for Judgment on the Pleadings – A motion for a judgment based on the pleadings that have been filed with the court before a trial when there are no facts in dispute and only questions of law remain

Motion for Summary Judgment – A motion for a judgment before a trial when there are no facts in dispute and the party is entitled to a judgment as a matter of law

Motion to Dismiss – A motion before or during trial to dismiss the action based on insufficiency of the pleading, process, venue, etc.

Plaintiff – A person or entity who brings an action

Pleading – Formal allegations by the parties of their respective claims and defenses

Reaffirmation Agreement – An agreement that reaffirms a previous debt or contract

Redemption – Paying a delinquent loan in full to prevent repossession or foreclosure

Reinstatement – Bringing a delinquent loan current by paying the arrearage

Repossession – Seizure by the creditor of collateral after the debtor's default, usually without court supervision or permission

Service of Process – The delivering to or leaving with a party a copy of pleadings in a lawsuit

Summons – Written document issued by the court clerk and delivered by sheriff or other person that is used to commence a civil action

Venue – The particular county or geographical area, in which a court with jurisdiction may hear and determine a case

Appendix A

Statutes of Limitations

The statute of limitations for a delinquent debt is the time limit for the creditor to file a lawsuit to obtain a judgment for that debt. This period starts when the debtor defaults on the debt. The fact that the statute of limitations has expired or run on a particular debt does not mean that a lawsuit cannot be filed, but it gives you a defense and cause to have the lawsuit dismissed.

Listed below are statutes of limitation for various kinds of debts in years. Open Accounts are generally credit cards or other revolving credit accounts. A promissory note differs from a written contract only slightly; usually if you have signed a promissory note it will be labeled as such, other signed agreements are written contracts. Automobile loans can be considered written contracts unless the automobile has been repossessed and sold by the creditor and the creditor is seeking the deficiency balance on the contract. In that situation there is a separate statute of limitations for deficiency actions, most commonly four years, however, you must check your state statute for the exact time.

State	Oral Agreements	Written Contracts	Promissory Notes	Open Accounts
Alabama	6	6	6	3
Alaska	6	6	6	6
Arizona	3	6	5	3
Arkansas	3	5	6	3
California	2	4	4	4
Colorado	6	6	6	6
Connecticut	3	6	6	6
Delaware	3	3	6	3
D.C.	3	3	3	3
Florida	4	5	5	4
Georgia	4	6	6	4
Hawaii	6	6	6	6
Idaho	4	5	10	4
Illinois	5	10	6	5
Indiana	6	10	10	6
Iowa	5	10	5	5
Kansas	3	5	5	3
Kentucky	5	15	15	5
Louisiana	10	10	10	3
Maine	6	6	6	6
Maryland	3	3	6	3
Massachusetts	6	6	6	6
Michigan	6	6	6	6
Minnesota	6	6	6	6
Mississippi	3	3	3	3

Missouri	5	10	10	5
Montana	5	8	8	5
Nebraska	4	5	6	4
Nevada	4	6	3	4
New Hampshire	3	3	6	3
New Jersey	6	6	6	6
New Mexico	4	6	6	4
New York	6	6	6	6
North Carolina	3	3	5	3
North Dakota	6	6	6	6
Ohio	6	15	15	-
Oklahoma	3	5	5	3
Oregon	6	6	6	6
Pennsylvania	4	6	4	6
Rhode Island	15	15	10	10
South Carolina	10	10	3	3
South Dakota	6	6	6	6
Tennessee	6	6	6	6
Texas	4	4	4	4
Utah	4	6	6	4
Vermont	6	6	5	6
Virginia	3	5	6	3
Washington	3	6	6	3
West Virginia	5	10	6	5
Wisconsin	6	6	10	6
Wyoming	8	10	10	8

The above information is listed for reference only and is believed to be accurate at the time of creation of this document. However, statutes are often changed and you should confirm any statute of limitation with a current copy of your state's statute before relying on the information.

Statute of Limitations on Judgments and Judgment Interest

Once a judgment is obtained, a creditor has a certain number of years to collect that judgment from the Defendant before the judgment "expires". Most states allow for a judgment to be "revived" or "renewed" for another term of years. Therefore, if you have had a judgment entered against you, while your creditor may not be able to collect any money from you for several years after the judgment is entered, if you suddenly come into some money before the expires, the creditor can attempt to collect that money. Additionally, all states award a statutory rate of interest on judgments that accrues if the judgment does not specify a higher rate.

State	Statute (Years)	Interest Rate (%)
Alabama	20	12
Alaska	5	10
Arizona	10	Fed + 5
Arkansas	10	10.5
California	10	10
Colorado	20	8
Connecticut	20	10
Delaware	No Limit	Legal + Fed Discount + 5
D.C.	3	70% if interest rate or 6%
Florida	20	10
Georgia	7	12
Hawaii	10	10
Idaho	20	9
Illinois	20	8
Indiana	20	10
Iowa	6	10.875
Kansas	5	4% above Fed Discount
Kentucky	15	12
Louisiana	10	9
Maine	20	7.5
Maryland	12	15% if under 30 months, T-bill rate if over
Massachusetts	20	10
Michigan	10	20
Minnesota	10	6.953
Mississippi	7	8
Missouri	10	Amount in contract
Montana	10	9
Nebraska	20	2% above prime
Nevada	10	9
New Hampshire	20	10
New Jersey	14	no provisions
New Mexico	20	8.75
New York	10	8
North Carolina	5	10

North Dakota	6	1% above bond Equiv Yield
Ohio	21	12
Oklahoma	5	10
Oregon	10	4% over T-bill
Pennsylvania	4	9% renewable @ 10 yrs
Rhode Island	20	6
South Carolina	10	12
South Dakota	20	14
Tennessee	10	10
Texas	10	10
Utah	8	6
Vermont	20	12
Virginia	8	Contract rate
Washington	10	9
West Virginia	20	10
Wisconsin	10	12
Wyoming	5	12

The above information is listed for reference only and is believed to be accurate at the time of creation of this document. However, statutes are often changed and you should confirm any statute of limitation with a current copy of your state's statute before relying on the information.

Appendix B

Forms

A – Sample letter requesting verification of debt

Certified Mail, return receipt requested

Date

ABC Collections
Address
City, State Zip

Re: Your Name
Account number: 000-00000-000

Dear Sir or Madam:

On date, I received a letter from you stating that I owe $4,000.00 to Mega Credit Card Company. I dispute that I owe this debt. I paid this account in full a year ago. I am requesting verification of this debt as provided under the Fair Debt Collection Practices Act. Please investigate this matter, and stop all collection efforts until you provide me with verification.

Sincerely,

Your Name
Your Address

(Be sure to keep a copy for your records)

SAMPLE

B – Sample cease & desist letter to stop the collection agency contacting you

Certified Mail, return receipt requested

Date

ABC Collections
Address
City, State Zip

Re: Your Name
Account number: 000-00000-000

Dear Sir or Madam:

I am exercising my rights under the Fair Debt Collection Practices Act. I am unable to pay this debt. (or "I can only pay $10.00 per month on this debt" or "My only income is social security."). I have no other means to use to pay this debt.

Immediately cease all communications with me.

Sincerely,

Your Name
Your Address

(Be sure to keep a copy for your records)

SAMPLE

C – Sample Answer to a Lawsuit

YOUR COURT, YOUR STATE AND YOUR COUNTY

MEGA CREDIT CARD COMPANY,

PLAINTIFF,

V.

YOUR NAME,

DEFENDANT.

Type the Caption area the same as the Complaint even if it is not correct

NO. YOUR CASE NUMBER

ANSWER

The Defendant(s) answers the Plaintiff's complaint as follows:

1. Admits the statements contained in paragraph numbers 1 and 2 except for the following statements:

   _____

8. Denies the statements contained in paragraph numbers 3 and 4, except for the following statements:

   _____

9. Lacks knowledge about the truth and therefore denies the statements contained in paragraphs numbered 5 and 6.

AFFIRMATIVE DEFENSES

Use only defenses applicable to your case.

The Defendant(s) other defenses are:

Plaintiff's claim is barred by the statute of limitations.

Plaintiff's complaint fails to state a claim upon which relief can be granted.

Venue is improper.

COUNTERCLAIM

Plaintiff owes Defendant $_____ because the merchandise was defective and Defendant was injured while using the merchandise.

You could be liable for additional court costs and attorney fees if you are unsuccessful on a counterclaim

WHEREFORE, Defendant(s) request that this lawsuit be dismissed and that a judgment be entered against the Plaintiff for any counterclaims, court costs, or attorney fees.

This the _____ day of _____, 200__.

Respectfully submitted,

_____
Your Name
Your Address
Your Phone Number

CERTIFICATE OF SERVICE

I, YOUR NAME, certify that the above Answer was mailed by U.S. Mail, postage prepaid to the Plaintiff at _____ (address)

This the _____ day of _____, 200__.

_____
Your Name

SAMPLE

D – Sworn Denial of Account (Affidavit)

YOUR COURT, YOUR STATE AND YOUR COUNTY

MEGA CREDIT CARD COMPANY,

PLAINTIFF,

Type the Caption area the same as the Complaint even if it is not correct

V. NO. YOUR CASE NUMBER

YOUR NAME,

DEFENDANT.

AFFIDAVIT

STATE OF YOUR STATE
COUNTY OF YOUR COUNTY

Personally appeared before me, the undersigned notary for the above named county and state, YOUR NAME, who being sworn, says:

1. My name is YOUR NAME and I reside at YOUR ADDRESS.

2. My credit card was stolen on June 1, 2001, and charges were made by persons unknown to me without my permission.

State the facts of your case here

3. I do not owe the amount that is the subject of this lawsuit.

_____
Your Name

Sworn to and subscribed before me this _____day of _____, 200__.

_____
Notary Public

My Commission Expires:

SAMPLE

E – Interrogatories to the Plaintiff

YOUR COURT, YOUR STATE AND YOUR COUNTY

MEGA CREDIT CARD COMPANY,

PLAINTIFF,

V.

YOUR NAME,

DEFENDANT.

Type the Caption area the same as the Complaint even if it is not correct

NO. YOUR CASE NUMBER

DEFENDANT'S INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS, AND REQUEST FOR ADMISSIONS TO THE PLAINTIFF

Comes now the Defendant, who propounds the following Interrogatories, Request for Production of Documents and Request for Admissions to the Plaintiff:

INTERROGATORIES

Interrogatory No. 1: Please state your name, your position with the Plaintiff, your address and phone number.

Answer:

Interrogatory No. 2: If applicable, please state where the Plaintiff is incorporated, when it was incorporated, who is the President, and if the Plaintiff is a privately held corporation who are the primary shareholders.

Answer:

Interrogatory No. 3: If the Plaintiff is a publicly held corporation, please state the date the corporation became a publicly held corporation, the stock exchange that the

Plaintiff's stock is traded on, the name the Plaintiff's stock is traded under and the current value of the Plaintiff's stock

Answer:

Interrogatory No. 4: Please state the primary business the Plaintiff is engaged in.

Answer:

Interrogatory No. 5: Please state when the Plaintiff contends that the Defendant first became indebted to the Plaintiff, the manner in which the Defendant became indebted and the original amount of the debt.

Answer:

Interrogatory No. 6: Please give the names, positions, and business addresses and phone numbers of all employees or agents of the Plaintiff who handled the Defendant's debt with the Plaintiff.

Answer:

Interrogatory No. 7: Please give the names, positions, and business addresses and phone numbers of all employees or agent of the Plaintiff who spoke with the Defendant in person or on the telephone and a summary of their conversation with the Defendant.

Answer:

Interrogatory No. 8: Please state when the Plaintiff contends that the Defendant first defaulted on the debt to the Plaintiff and the balance of the debt at that time.

Answer:

Interrogatory No. 9: Please state the interest rate that the Plaintiff applied to the debt and the manner in which the interest was computed.

Answer:

Interrogatory No. 10: Please state the balance that the Plaintiff contends the Defendant owes at this time.

Answer:

REQUEST FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1:

Please produce a copy of any document that the Plaintiff contends was signed by the Defendant.

Request for Production No. 2:

Please produce a copy of any credit agreement or account terms that the Plaintiff contends governs the Defendant's account with the Plaintiff.

Request for Production No. 3:

Please produce a copy of all payments that were received on the debt that the Plaintiff contends the Defendant owes the Plaintiff, along with an explanation of how the payments were applied to the debt.

Request for Production No. 4:

Please produce a copy of all correspondence between the Plaintiff and the Defendant.

Request for Production No. 5:

Please produce a copy of any recordings or transcripts of conversations between the Defendant and an employee or agent of the Plaintiff.

REQUEST FOR ADMISSIONS

Request for Admissions No. 1:

Admit that the Defendant does not owe a balance to the Plaintiff.

Request for Admissions No. 2:

Admit that the Defendant did not sign a contract or agreement for the debt the Plaintiff contends the Defendant owes.

Respectfully submitted,

_____
Your Name
Your Address

CERTIFICATE OF SERVICE

I, YOUR NAME, certify that the above Interrogatories were mailed by U.S. Mail, postage prepaid to the Plaintiff at _____ (address)

This the _____ day of _____, 200__.

_____
Your Name

F – Exemptions

YOUR COURT, YOUR STATE AND YOUR COUNTY

MEGA CREDIT CARD COMPANY,

PLAINTIFF,

Type the Caption area the same as the Complaint even if it is not correct

V. NO. YOUR CASE NUMBER

YOUR NAME,

DEFENDANT.

DEFENDANT'S EXEMPTIONS

Comes now the Defendant, who files this list of Exemptions according to law and lists the exempt property as such:

Check local laws for exemptions for your state

1. (ex. Real property in the amount of $25,000)
2. (ex. Checking account with a balance of $1,000)
3. (ex. Furniture and household goods worth $2,500)
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

13. _____

14. _____

Respectfully submitted,

_____
Your Name
Your Address

CERTIFICATE OF SERVICE

I, YOUR NAME, certify that the above Exemptions were mailed by U.S. Mail, postage prepaid to the Plaintiff at _____ (address)

This the _____ day of _____, 200__.

_____
Your Name

SAMPLE

G – Letter to Credit Bureau Disputing Incorrect Information – No. 1

Certified Mail, return receipt requested

Date

ABC Credit Bureau
Address
City, State Zip

Re: Your Name
Creditor Name
Account number: 000-00000-000

Dear Sir or Madam:

I dispute the information on my credit report regarding the above referenced creditor and account. I was never delinquent on the account as is listed on my credit report. Please investigate the matter and report your findings to me as soon as possible.

Thank you.

Sincerely,

Your Name
Your Address

Keep a copy of all letters and other information!!

H – Letter to Credit Bureau Disputing Incorrect Information – No. 2

Certified Mail, return receipt requested

Date

ABC Credit Bureau
Address
City, State Zip

Dear Sir or Madam:

I have attached a copy of my credit report from your credit bureau. I have circled the accounts or information that I dispute. The accounts are listed as follows: (list the creditors and the account numbers and why you dispute the items).

I have attached the following information regarding the accounts. (List the accounts and the items you have attached supporting your dispute)

Please investigate the matter and report your findings to me as soon as possible. I expect the items to be deleted or corrected as soon as possible.

Thank you.

Sincerely,

Your Name
Your Address

Enclosure

Keep a copy of all letters and other information!!

I – Letter to Credit Bureau Removing Judgment or Tax Liens

Certified Mail, return receipt requested

Date

ABC Credit Bureau
Address
City, State Zip

Re: Your Name
Judgment Creditor Name or Tax Lien Identification
Docket number or other lien identification

Dear Sir or Madam:

I am enclosing a filed copy of a satisfaction of (judgment or lien) which has been filed with the local court. Please remove the information from my credit report as soon as possible.

Thank you.

Sincerely,

Your Name
Your Address

Enclosure

Keep a copy of all letters and other information!!

J – Letter to Credit Bureau After No Response To Original Letter

Certified Mail, return receipt requested

Date

ABC Credit Bureau
Address
City, State Zip

Re: Your Name

Dear Sir or Madam:

On (date), I wrote the enclosed letter to you regarding the information on my credit report. Thirty days have passed and I have not received any reply. According to the Fair Credit Reporting Act, you are required to investigate my dispute and respond within thirty days. Please reinvestigate this dispute and respond as soon as possible or I will be forced to seek counsel for further action.

Thank you.

Sincerely,

Your Name
Your Address

Enclosure

Keep a copy of all letters and other information!!

K – Letter to Creditor to Settle Account

Certified Mail, return receipt requested

Date

Mega Creditor
Address
City, State Zip

Re: Your Name
Your Account Number

Dear Sir or Madam:

I would like to resolve the above account with your company. Therefore, I would like to offer $_____(I recommend starting at 50% of the balance) payable within thirty days of acceptance. Upon receipt of this payment, I expect to receive a letter from your company stating that the account is paid in full and a copy of your report to each credit bureaus showing the status of the account as paid in full. Please respond in writing within ten days if you accept this offer.

Thank you.

Sincerely,

Your Name
Your Address

Keep a copy of all letters and other information!!

L – Letter to Creditor to Dispute Information on Credit Report

Certified Mail, return receipt requested

Date

Mega Creditor
Address
City, State Zip

Re: Your Name
Your Account Number

Dear Sir or Madam:

I am enclosing a copy of my credit report with my account information from your company. I dispute the status and history of my account that you reported to the credit bureau. Please investigate this account and provide me with verification of the status and history of my account as soon as possible.

Thank you.

Sincerely,

Your Name
Your Address

Enclosure

Keep a copy of all letters and other information!!

Appendix C

Helpful Links

Median Income and means testing information for Bankruptcy
https://www.justice.gov/ust/means-testing/20160501

Bankruptcy Basics
http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics

Credit Bureaus:

Experian – 1-888-EXPERIAN (1-888-397-3742) **www.experian.com**

TransUnion Corporation – 1-800-888-4213 **www.tuc.com**

Equifax – 1-800-685-1111 **www.equifax.com**

Credit Reports
www.annualcreditreport.com

Appendix D

Fair Debt Collection Practices Act – 15 USC § 1692

Sec. 1692. - Congressional findings and declaration of purpose

(a) Abusive practices

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

(b) Inadequacy of laws

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

(c) Available non-abusive collection methods

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

(d) Interstate commerce

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

(e) Purposes

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

Sec. 1692a. - Definitions

As used in this subchapter -

(1)

The term "Commission" means the Federal Trade Commission.

(2)

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

(3)

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

(4)

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

(5)

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

(6)

The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of

any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include -

(A)

any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B)

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

(C)

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

(D)

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

(E)

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

(F)

any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity

(i)

is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(ii)

concerns a debt which was originated by such person;

(iii)

concerns a debt which was not in default at the time it was obtained by such person; or

(iv)

concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7)

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

(8)

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

Sec. 1692b. - Acquisition of location information

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

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

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

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

(4) not communicate by post card;

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

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

Sec. 1692c. - Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt -

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

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

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

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

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

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

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

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

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

(d) "Consumer" defined

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

Sec. 1692d. - Harassment or abuse

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

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

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

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.

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

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

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity

Sec. 1692e. - False or misleading representations

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

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

(2) The false representation of -

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

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

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

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

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

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

(B) become subject to any practice prohibited by this subchapter.

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

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

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

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

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

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

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

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

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

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title

Sec. 1692f. - Unfair practices

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 1692g. - Validation of debts

(a) Notice of debt; contents

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

(1) the amount of the debt;

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

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

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

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

(b) Disputed debts

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

(c) Admission of liability

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

Sec. 1692h. - Multiple debts

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

Appendix E

Fair Credit Reporting Act – 15 U.S.C. §1681

Sec. 1681. - Congressional findings and statement of purpose

(a) Accuracy and fairness of credit reporting

The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, [1] credit standing, credit capacity, character, and general reputation of consumers. "creditworthiness,".

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter

Sec. 1681a. - Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) Consumer Report. -

(1) In general. - The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for - "creditworthiness,".

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) Exclusions. - The term "consumer report" does not include -

(A) any -

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (o) of this section.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(j) Definitions Relating to Child Support Obligations. -

(1) Overdue support. - The term "overdue support" has the meaning given to such term in section 666(e) of title 42.

(2) State or local child support enforcement agency. - The term "State or local child support enforcement agency" means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) Adverse Action. -

(1) Actions included. -

The term "adverse action" -

(A) has the same meaning as in section 1691(d)(6) of this title; and

(B) means -

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 1681b(a)(3)(D) of this title; and

(iv) an action taken or determination that is -

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 1681b(a)(3)(F)(ii) of this title; and

(II) adverse to the interests of the consumer.

(2) Applicable findings, decisions, commentary, and orders. -

For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 1691(d)(6) of this title by the Board of Governors of the Federal Reserve System or any court shall apply.

(l) Firm Offer of Credit or Insurance. -

The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness [2] or insurability, as applicable, that are established - "creditworthiness".

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification -

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness [2] or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was -

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) Credit or Insurance Transaction That Is Not Initiated by the Consumer. -

The term "credit or insurance transaction that is not initiated by the consumer" does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of -

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) State. -

The term "State" means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) Excluded Communications. -

A communication is described in this subsection if it is a communication -

(1) that, but for subsection (d)(2)(D) of this section, would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of -

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which -

(A) the consumer who is the subject of the communication -

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the

consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication -

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) Consumer Reporting Agency That Compiles and Maintains Files on Consumers on a Nationwide Basis. -

The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, (FOOTNOTE 3) credit standing, or credit capacity, each of the following regarding consumers residing nationwide: "creditworthiness,".

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business

Sec. 1681b. - Permissible purposes of consumer reports

(a) In general

Subject to subsection (c) of this section, any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe -

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information -

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

(4)

In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that -

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5)

To an agency administering a State plan under section 654 of title 42 for use to set an initial or modified child support award.

(b) Conditions for furnishing and using consumer reports for employment purposes

(1) Certification from user

A consumer reporting agency may furnish a consumer report for employment purposes only if -

(A) the person who obtains such report from the agency certifies to the agency that -

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

(2) Disclosure to consumer

(A) In general

Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless -

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

(B) Application by mail, telephone, computer, or other similar means

If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application -

(i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 1681m(a)(3) of this title; and

(ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.

(C) Scope

Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if -

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) Conditions on use for adverse actions

(A) In general

Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates -

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

(B) Application by mail, telephone, computer, or other similar means

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 1681m(a) of this title, within 3 business days of taking such action, an oral, written or electronic notification -

(I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

(C) Scope

Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if -

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) Exception for national security investigations

(A) In general

In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that -

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will -

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) Notification of consumer upon conclusion of investigation

Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made -

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) Delegation by head of agency or department

For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.

(D) Report to the Congress

Not later than January 31 of each year, the head of each agency and department of the United States Government that exercised authority under this paragraph during the preceding year shall submit a report to the Congress on the number of times the department or agency exercised such authority during the year.

(E) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Classified information

The term "classified information" means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.

(ii) National security investigation

The term "national security investigation" means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by consumer

(1) In general

A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) of this section in connection with any credit or insurance transaction that is not initiated by the consumer only if -

(A) the consumer authorizes the agency to provide such report to such person; or

(B) **(i)** the transaction consists of a firm offer of credit or insurance;

(ii) the consumer reporting agency has complied with subsection (e) of this section; and

(iii) there is not in effect an election by the consumer, made in accordance with subsection (e) of this section, to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph.

(2) Limits on information received under paragraph (1)(B)

A person may receive pursuant to paragraph (1)(B) only -

(A) the name and address of a consumer;

(B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and

(C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

(3) Information regarding inquiries

Except as provided in section 1681g(a)(5) of this title, a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.

(d) Reserved

(e) Election of consumer to be excluded from lists

(1) In general

A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) of this section in connection with a credit or insurance transaction that is not initiated by the consumer, by notifying the agency in accordance with paragraph (2) that the consumer does not consent to

any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

(2) Manner of notification

A consumer shall notify a consumer reporting agency under paragraph (1) -

(A) through the notification system maintained by the agency under paragraph (5); or

(B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.

(3) Response of agency after notification through system

Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall -

(A) inform the consumer that the election is effective only for the 2-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and

(B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.

(4) Effectiveness of election

An election of a consumer under paragraph (1) -

(A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

(B) shall be effective with respect to a consumer reporting agency -

(i) subject to subparagraph (C), during the 2-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or

(ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);

(C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and

(D) shall be effective with respect to each affiliate of the agency.

(5) Notification system

(A) In general

Each consumer reporting agency that, under subsection (c)(1)(B) of this section, furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer, shall -

(i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and

(ii) publish by not later than 365 days after September 30, 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency -

(I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and

(II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (i).

(B) Establishment and maintenance as compliance

Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

(6) Notification system by agencies that operate nationwide

Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) Certain use or obtaining of information prohibited

A person shall not use or obtain a consumer report for any purpose unless -

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.

(g) Furnishing reports containing medical information

A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report

Sec. 1681c. - Requirements relating to information contained in consumer reports

(a) Information excluded from consumer reports

Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.

(b) Exempted cases

The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with -

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $150,000 or more;
(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or
(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or more.

(c) Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) of this section shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date

Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after September 30, 1996.

(d) Information required to be disclosed

Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11 shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11 is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(e) Indication of closure of account by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(4) of this title that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(3) of this title that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

Sec. 1681d. - Disclosure of investigative consumer reports

(a) Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless -

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure

(A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and

(B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to section 1681g(c) of this title; and

(2) the person certifies or has certified to the consumer reporting agency that -

(A) the person has made the disclosures to the consumer required by paragraph (1); and

(B) the person will comply with subsection (b) of this section.

(b) Disclosure on request of nature and scope of investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) Limitation on liability upon showing of reasonable procedures for compliance with provisions

No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

(d) Prohibitions

(1) Certification

A consumer reporting agency shall not prepare or furnish an investigative consumer report unless the agency has received a certification under subsection (a)(2) of this section from the person who requested the report.

(2) Inquiries

A consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable Federal or State equal employment opportunity law or regulation.

(3) Certain public record information

Except as otherwise provided in section 1681k of this title, a consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(4) Certain adverse information

A consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless -

(A) the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information; or

(B) the person interviewed is the best possible source of the information

Sec. 1681e. - Compliance procedures

(a) Identity and purposes of credit users

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Disclosure of consumer reports by users allowed

A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) Notice to users and furnishers of information

(1) Notice requirement

A consumer reporting agency shall provide to any person -

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;

a notice of such person's responsibilities under this subchapter.

(2) Content of notice

The Federal Trade Commission shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Federal Trade Commission prescription under this paragraph.

(e) Procurement of consumer report for resale

(1) Disclosure

A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report -

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 1681b of this title for which the report is furnished to the end-user of the report (or information).

(2) Responsibilities of procurers for resale

A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall -

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 1681b of this title, including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person -

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) Resale of consumer report to a Federal agency or department

Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if -

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) of this title); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department

Sec. 1681f. - Disclosures to governmental agencies

Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency

Sec. 1681g. - Disclosures to consumers

(a) Information on file; sources; report recipients

Every consumer reporting agency shall, upon request, and subject to section 1681h(a)(1) of this title, clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)

(A) Identification of each person (including each end-user identified under section 1681e(e)(1) of this title) that procured a consumer report -

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include -

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(C) Subparagraph (A) does not apply if -

(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) of this title); and

(ii) the head of the agency or department makes a written finding as prescribed under section 1681b(b)(4)(A) of this title.

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(b) Exempt information

The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(c) Summary of rights required to be included with disclosure

(1) Summary of rights

A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section -

(A) a written summary of all of the rights that the consumer has under this subchapter; and

(B) in the case of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours.

(2) Specific items required to be included

The summary of rights required under paragraph (1) shall include -

(A) a brief description of this subchapter and all rights of consumers under this subchapter;

(B) an explanation of how the consumer may exercise the rights of the consumer under this subchapter;

(C) a list of all Federal agencies responsible for enforcing any provision of this subchapter and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from a consumer's file, unless the information is outdated under section 1681c of this title or cannot be verified.

(3) Form of summary of rights

For purposes of this subsection and any disclosure by a consumer reporting agency required under this subchapter with respect to consumers' rights, the Federal Trade Commission (after consultation with each Federal agency referred to in section 1681s(b) of this title) shall prescribe the form and content of any such disclosure of the rights of consumers required under this subchapter. A consumer reporting agency shall be in compliance with this subsection if it provides disclosures under paragraph (1) that are substantially similar to the Federal Trade Commission prescription under this paragraph.

(4) Effectiveness

No disclosures shall be required under this subsection until the date on which the Federal Trade Commission prescribes the form and content of such disclosures under paragraph (3)

Sec. 1681h. - Conditions and form of disclosure to consumers

(a) In general

(1) Proper identification

A consumer reporting agency shall require, as a condition of making the disclosures required under section 1681g of this title, that the consumer furnish proper identification.

(2) Disclosure in writing

Except as provided in subsection (b) of this section, the disclosures required to be made under section 1681g of this title shall be provided under that section in writing.

(b) Other forms of disclosure

(1) In general

If authorized by a consumer, a consumer reporting agency may make the disclosures required under 1681g of this title - "section".

(A) other than in writing; and

(B) in such form as may be -

(i) specified by the consumer in accordance with paragraph (2); and

(ii) available from the agency.

(2) Form

A consumer may specify pursuant to paragraph (1) that disclosures under section 1681g of this title shall be made -

(A) in person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;

(B) by telephone, if the consumer has made a written request for disclosure by telephone;

(C) by electronic means, if available from the agency; or

(D) by any other reasonable means that is available from the agency.

(c) Trained personnel

Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 1681g of this title.

(d) Persons accompanying consumer

The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Limitation of liability

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report except as to false information furnished with malice or willful intent to injure such consumer.

Sec. 1681i. - Procedure in case of disputed accuracy

(a) Reinvestigations of disputed information

(1) Reinvestigation required

(A) In general

If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(B) Extension of period to reinvestigate

Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

(C) Limitations on extension of period to reinvestigate

Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt notice of dispute to furnisher of information

(A) In general

Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer.

(B) Provision of other information from consumer

The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination that dispute is frivolous or irrelevant

(A) In general

Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) Notice of determination

Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

(C) Contents of notice

A notice under subparagraph (B) shall include -

(i) the reasons for the determination under subparagraph (A); and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(4) Consideration of consumer information

In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.

(5) Treatment of inaccurate or unverifiable information

(A) In general

If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation.

(B) Requirements relating to reinsertion of previously deleted material

(i) Certification of accuracy of information

If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) Notice to consumer

If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) Additional information

As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion -

(I) a statement that the disputed information has been reinserted;

(II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) Procedures to prevent reappearance

A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

(D) Automated reinvestigation system

Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

(6) Notice of results of reinvestigation

(A) In general

A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.

(B) Contents

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

(i) a statement that the reinvestigation is completed;

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

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

(iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(v) a notice that the consumer has the right to request under subsection (d) of this section that the consumer reporting agency furnish notifications under that subsection.

(7) Description of reinvestigation procedure

A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iii) by not later than 15 days after receiving a request from the consumer for that description.

(8) Expedited dispute resolution

If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency -

(A) provides prompt notice of the deletion to the consumer by telephone;

(B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) of this section that the agency furnish notifications under that subsection; and

(C) provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.

(b) Statement of dispute

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports

Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information

Sec. 1681j. - Charges for certain disclosures

(a) Reasonable charges allowed for certain disclosures

(1) In general

Except as provided in subsections (b), (c), and (d) of this section, a consumer reporting agency may impose a reasonable charge on a consumer -

(A) for making a disclosure to the consumer pursuant to section 1681g of this title, which charge -

(i) shall not exceed $8; and

(ii) shall be indicated to the consumer before making the disclosure; and

(B) for furnishing, pursuant to section 1681i(d) of this title, following a reinvestigation under section 1681i(a) of this title, a statement, codification, or summary to a person designated by the consumer under that section after the 30-day period beginning on the date of notification of the consumer under paragraph (6) or (8) of section 1681i(a) of this title with respect to the reinvestigation, which charge -

(i) shall not exceed the charge that the agency would impose on each designated recipient for a consumer report; and

(ii) shall be indicated to the consumer before furnishing such information.

(2) Modification of amount

The Federal Trade Commission shall increase the amount referred to in paragraph (1)(A)(i) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

(b) Free disclosure after adverse notice to consumer

Each consumer reporting agency that maintains a file on a consumer shall make all disclosures pursuant to section 1681g of this title without charge to the consumer if, not later than 60 days after receipt by such consumer of a notification pursuant to section 1681m of this title, or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g of this title.

(c) Free disclosure under certain other circumstances

Upon the request of the consumer, a consumer reporting agency shall make all disclosures pursuant to section 1681g of this title once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer -

(1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;

(2) is a recipient of public welfare assistance; or

(3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.

(d) Other charges prohibited

A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this subchapter or making any disclosure required by this subchapter, except as authorized by subsection (a) of this section

Sec. 1681k. - Public record information for employment purposes

(a) In general

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall -

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to

arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

(b) Exemption for national security investigations

Subsection (a) of this section does not apply in the case of an agency or department of the United States Government that seeks to obtain and use a consumer report for employment purposes, if the head of the agency or department makes a written finding as prescribed under section 1681b(b)(4)(A) of this title

Sec. 1681l. - Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished

Sec. 1681m. - Requirements on users of consumer reports

(a) Duties of users taking adverse actions on basis of information contained in consumer reports

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall -

(1) provide oral, written, or electronic notice of the adverse action to the consumer;

(2) provide to the consumer orally, in writing, or electronically -

(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(3) provide to the consumer an oral, written, or electronic notice of the consumer's right -

(A) to obtain, under section 1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under section 1681i of this title, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

(b) Adverse action based on information obtained from third parties other than consumer reporting agencies

(1) In general

Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for

such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer. "creditworthiness,".

(2) Duties of person taking certain actions based on information provided by affiliate

(A) Duties, generally

If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall -

(i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and

(ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (i), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

(B) Action described

An action referred to in subparagraph (A) is an adverse action described in section 1681a(k)(1)(A) of this title, taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 1681a(k)(1)(B) of this title.

(C) Information described

Information referred to in subparagraph (A) -

(i) except as provided in clause (ii), is information that -

(I) is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control to the person taking the action; and

(II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and

(ii) does not include -

(I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or

(II) information in a consumer report.

(c) Reasonable procedures to assure compliance

No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.

(d) Duties of users making written credit or insurance solicitations on basis of information contained in consumer files

(1) In general

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 1681b(c)(1)(B) of this title, shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that -

(A) information contained in the consumer's consumer report was used in connection with the transaction;

(B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; "creditworthiness".

(C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;

(D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

(E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 1681b(e) of this title.

(2) Disclosure of address and telephone number

A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 1681b(e) of this title.

(3) Maintaining criteria on file

A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

(4) Authority of Federal agencies regarding unfair or deceptive acts or practices not affected

This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer

Sec. 1681n. - Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of -

(1)

(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper

Sec. 1681o. - Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of -

(1) any actual damages sustained by the consumer as a result of the failure;
(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper

Sec. 1681p. - Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation

Sec. 1681q. - Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both

Sec. 1681r. - Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, imprisoned for not more than 2 years, or both

Sec. 1681s. - Administrative enforcement

(a) Enforcement by Federal Trade Commission

(1)

Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof (15 U.S.C. 45(b)) with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

(2)

(A) In the event of a knowing violation, which constitutes a pattern or practice of violations of this subchapter, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this subchapter. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(3)

Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 1681s-2(a)(1) of this title unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

(b) Enforcement by other agencies

Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish

information to such agencies, and users of information that are subject to subsection (d) of section 1681m of this title shall be enforced under -

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of -
- **(A)** national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
- **(B)** member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq., 611 et seq.), by the Board of Governors of the Federal Reserve System; and
- **(C)** banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(5) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part; and

(6) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State -
- **(A)** may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;
- **(B)** subject to paragraph (5), may bring an action on behalf of the residents of the State to recover -
  - **(i)** damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;
  - **(ii)** in the case of a violation of section 1681s-2(a) of this title, damages for which the person would, but for section 1681s-2(c) of this title, be liable to such residents as a result of the violation; or
  - **(iii)** damages of not more than $1,000 for each willful or negligent violation; and
- **(C)** in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under

subsection (b) of this section and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right -

(A) to intervene in the action;
(B) upon so intervening, to be heard on all matters arising therein;
(C) to remove the action to the appropriate United States district court; and
(D) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on State action while Federal action pending

If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for a violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this subchapter that is alleged in that complaint.

(5) Limitations on State actions for violation of section 1681s-2(a)(1)

(A) Violation of injunction required

A State may not bring an action against a person under paragraph (1)(B) for a violation of section 1681s-2(a)(1) of this title, unless -
(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and
(ii) the person has violated the injunction.

(B) Limitation on damages recoverable

In an action against a person under paragraph (1)(B) for a violation of section 1681s-2(a)(1) of this title, a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.

(d) Enforcement under other authority

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

(e) Regulatory authority

(1) The Federal banking agencies referred to in paragraphs (1) and (2) of subsection (b) of this section shall jointly prescribe such regulations as necessary to carry out the purposes of this subchapter with respect to any persons identified under paragraphs (1) and (2) of subsection (b) of this section, and the Board of Governors of the Federal Reserve System shall have authority to prescribe regulations consistent with such joint regulations with respect to bank holding companies and affiliates (other than depository institutions and consumer reporting agencies) of such holding companies.

(2) The Board of the National Credit Union Administration shall prescribe such regulations as necessary to carry out the purposes of this subchapter with respect to any persons identified under paragraph (3) of subsection (b) of this section

Sec. 1681s-1. - Information on overdue child support obligations

Notwithstanding any other provision of this subchapter, a consumer reporting agency shall include in any consumer report furnished by the agency in accordance with section 1681b of this title, any information on the failure of the consumer to pay overdue support which -

(1) is provided -

(A) to the consumer reporting agency by a State or local child support enforcement agency; or

(B) to the consumer reporting agency and verified by any local, State, or Federal Government agency; and

(2) antedates the report by 7 years or less

Sec. 1681s-2. - Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information

(1) Prohibition

(A) Reporting information with actual knowledge of errors

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors

A person shall not furnish information relating to a consumer to any consumer reporting agency if -

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement

A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(2) Duty to correct and update information

A person who -

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute

If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts

A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts

A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall -

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency; and

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Sections 1681n and 1681o of this title do not apply to any failure to comply with subsection (a) of this section, except as provided in section 1681s(c)(1)(B) of this title.

(d) Limitation on enforcement

Subsection (a) of this section shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials and the State officials identified in that section

Sec. 1681t. - Relation to State laws

(a) In general

Except as provided in subsections (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(b) General exceptions

No requirement or prohibition may be imposed under the laws of any State -

(1) with respect to any subject matter regulated under -

(A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;

(B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;

(C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;

(D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996; or

(F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply -

(i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on September 30, 1996); or

(ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on September 30, 1996);

(2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on September 30, 1996); or

(3) with respect to the form and content of any disclosure required to be made under section 1681g(c) of this title.

(c) "Firm offer of credit or insurance" defined

Notwithstanding any definition of the term "firm offer of credit or insurance" (or any equivalent term) under the laws of any State, the definition of that term contained in section 1681a(l) of this title shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

(d) Limitations

Subsections (b) and (c) of this section -

(1) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on September 30, 1996; and

(2) do not apply to any provision of State law (including any provision of a State constitution) that -

(A) is enacted after January 1, 2004;

(B) states explicitly that the provision is intended to supplement this subchapter; and

(C) gives greater protection to consumers than is provided under this subchapter

Sec. 1681u. - Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of title 12) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that -

(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

(2) there are specific and articulable facts giving reason to believe that the consumer -

(A) is a foreign power (as defined in section 1801 of title 50) or a person who is not a United States person (as defined in such section 1801 of title 50) and is an official of a foreign power; or

(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that term is defined in section 1801(c) of title 50) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

(b) Identifying information

Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that -

(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and
(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 1801 of title 50).

(c) Court order for disclosure of consumer reports

Notwithstanding section 1681b of this title or any other provision of this subchapter, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that -

(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and
(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought -
  (A) is an agent of a foreign power, and
  (B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 1801(c) of title 50) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(d) Confidentiality

No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c) of this section, and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

(e) Payment of fees

The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(f) Limit on dissemination

The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

(g) Rules of construction

Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this subchapter. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

(h) Reports to Congress

On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c) of this section.

(i) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of -

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(j) Disciplinary actions for violations

If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(k) Good-faith exception

Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information

pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(l) Limitation of remedies

Notwithstanding any other provision of this subchapter, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

(m) Injunctive relief

In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered