# The Credit Professional

**January 2006** **Volume 13**

# CONTENTS

**3** **A Closer Look at Coverage for Stolen Identity**

*By Iris Taylor*

Get the details on various identity-theft insurance policies offered by major carriers..

**6** **An Introduction to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005**

*By Thomas L. Canary, Jr.*

*Take a closer look at some of the major provisions of the new bankruptcy law.*

**11** **Starting a Collection Agency or Your Own Business: What You Need To Know**

*By Michelle Dunn*

*Learn how to start your own business.*

**16** **13 Tools for Resolving Conflict in the Workplace, with Customers and in Life**

*By Lee Jay Berman*

Learn how to effectively handle disagreements and work toward a solution benefiting all involved..

**22** **How Effective Will Creditors' Committees Be Under the New Bankruptcy Law?**

*By Michael R. King, Esq.*

*Find out how creditors' committees have changed under this new law..*

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# CONTENTS


**24** **Changes for Military Debtors & Creditors**

*By Brigadier General Harry B. Burchstead And Lieutenant Colonel Barry J. Bernstein*

*Get the latest information on the unique protections members of the military have with regard to their financial commitments.*

**29** **5 Simple Strategies for Unifying Your Project Teams**

*By Lonnie Pacelli.*

*Use these effective strategies to sharpen your management skills.*

**31** **Encourage Employees To Open Up and Give Feedback**

*By Briefings Publishing Group*

*Use these skills to be an effective leader on the job and with your volunteer work.*

**33** **Bank of America's New Debit/Savings Program Prompts Scrutiny**

*By Missy Baxter*

*This new program sounds good but does it truly benefit consumers? Find out.*

**35** **How Does the New Bankruptcy Law Affect Small Businesses?**

*By Michael R. King, Esq.*

*Learn what this new law means for small businesses filing for bankruptcy.*

**37** **How to Communicate During Times of Great Change**

*By Briefings Publishing Group*

*Learn the leadership skills you need to help your subordinates accept needed change in the workplace.*

**Organization News**

39 Membership News

40 Certification News


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# A Closer Look at Coverage for Stolen Identity

By Iris Taylor

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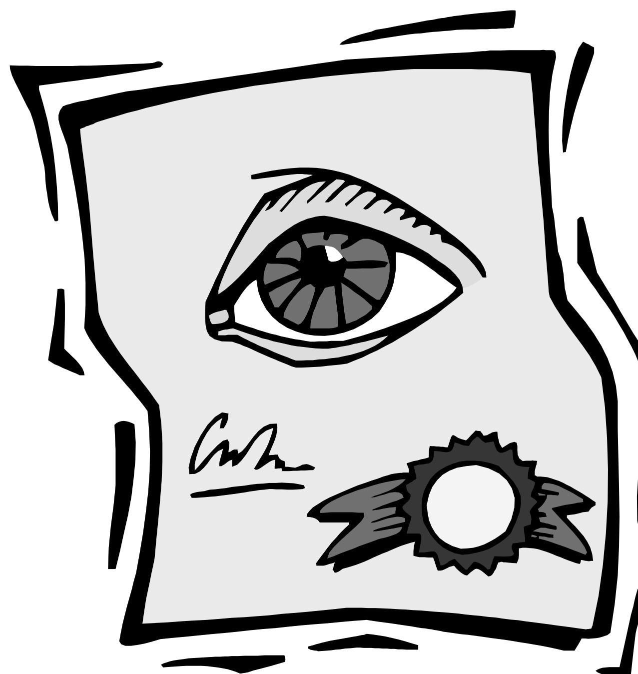
After last year's revelation that hackers penetrated a database containing the credit information of about 35,000 Californians, consumers may wonder if it's a smart idea to purchase identity-theft insurance.

Allstate Corp. of Northbrook, Ill., is the newest insurer to announce it will offer the coverage in Virginia starting this month. It joins a growing list of competitors that are betting policyholders will want some help recovering their identity if somebody rips it off.

Virginia, as Allstate noted during the launch of its new "Identity Theft Expenses" endorsement on Feb. 7, ranks 19th in the country for per-capita incidences of identity theft.

But it's a nationwide problem. In 2004, identity theft ranked No. 1 for the fifth year in a row on the Washington-based Federal Trade Commission's annual top 10 consumer-complaint list.

At the National Consumers League in Washington, for the first time in 2004, a form of identity theft called 'phishing' turned up not only on its top Internet



fraud list but on its telemarketing fraud list as well. 'Phishers' trick consumers into disclosing personal information and account numbers by pretending to represent a company they do business with. (Go to www.phishinginfo.org.)

The Identity Theft Resource center in San Diego (www.idtheftcenter.org) said in a 2003 study that affected Americans spend an average of 600 hours recovering from identity theft, often over a period of years. They spend an average of $1,400 in out-of-pocket expenses. The business community at that time lost between $40,000 to $92,000 per victim in fraudulent charges.

Identity theft is so pervasive that insurers consider it a peril. Aside from Allstate, the companies offering identity-theft insurance are American International Group, Chubb Group of Insurance Cos., Encompass Insurance, Farmers Group Inc. and St. Paul's Travelers.

What's included in the policies, which can range from free to $40 a-year? Are they worth purchasing, or are consumers

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better off getting help elsewhere? Here's a rundown:

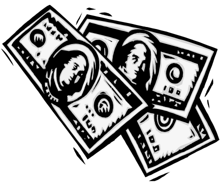
Allstate's plan, for an additional $40 a year, will pay a designated 'identity restoration' firm up to $2,000 per premium period to work on behalf of a policyholder or, alternatively, coach them on how to restore their identity themselves.

It will reimburse a do-it-yourselfer's expenses to a maximum of $25,000, including up to $250 daily, for lost wages as they take time off to unravel the mess. It also will pay for related legal, mailing, telephone and other costs. No deductible applies.

The policy, offered in other states since August, is available to customers with homeowners, condominium or renter's policies.

Encompass Insurance's policy, for $25 in Virginia, will reimburse identity-theft expenses up to $20,000, minus a $100 deductible per incident. It will pay a salary loss of up to $500 a week.

Encompass was among the earliest to launch identity-theft coverage, beginning in late 2001. It is a unit of Allstate.



Chubb has offered the coverage for free to homeowner policy-holders since June 2000. They get reimbursed up to $25,000 for expenses, including attorney fees, that are incurred to clear up their name, less a $500 deductible for each occurrence. The policy pays up to $250 a day to a maximum of $10,000 for lost wages.

American International Group has offered its plan only through employers for the past three years. The plan covers $10,000 to $25,000, depending on what the employer selects.

Income reimbursement generally is up to $500 a week for a maximum of four weeks. Employees dig themselves out of their dentity-theft troubles using a how-to kit provided by AIG at the basic level. At the premium level, a case manager does it on their behalf, taking some stress off them and saving time and workplace productivity, said Nancy Callahan, divisional vice president for AIG's Affinity Group Services unit in New York.

Farmers Group's plan is $25 annually. It reimburses up to $15,000 for expenses, including lost wages, attorney fees, mailing, photocopies, long-distance calls and whatever else it takes to get someone's identity restored, said spokeswoman Mary Flynn. The policyholder does the legwork. It began in December 2001.

St. Paul's Travelers policy, at $25 annually, covers reimbursement of lost wages, attorney fees and notary, mailing, telephone, loan reapplication and other costs. It has been available since 1999.

Individual policyholders can attach the endorsement to their homeowner's, renter's or condominium policy. The coverage limit is $15,000, with a $100 deductible. Employers can offer it to employees.

Soon the endorsement will include case management, said spokeswoman Laura Bradshaw. "The victim will have assistance every step of the way to fix the damage done to his/her credit."

Are these policies worth purchasing? Here's what some said:

Susan Grant, the director at the National Consumers League, said: "Generally, it's probably not worth it. They don't give you back any money that you've lost." The policies just provide expense reimbursements to clean up your credit.

"If they claim they're going to help you make the contacts, it may be helpful. But you probably still have to do a lot of work your-

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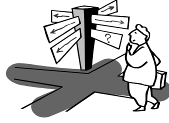
self, providing information on whom to contact and your accounts at these various institutions. By the time you've done that, you may as well have done it yourself. It's not that hard."



Bill Mellander, spokesman for Encompass, said customers first should assess how vulnerable they are, take action to make themselves less of a target and then consider coverage.

"The Allstate policy offers peace of mind" by giving back hours from work and family that victims would spend trying to get back their credit life. Would they even know where to start, or, once they begin, that they're doing the right thing?

Amida Mehta and Bruce McClary of Credit Counselors in Richmond said having protection may be nice if the consumer carefully reads and understands the policy's fine print and chooses to have it.

But the best protection is to be vigilant and proactive. At least once a year, consumers should obtain and carefully examine their credit report to catch unauthorized activity, and then they should report it quickly. The more time that elapses before a fraud is detected, the more difficult it is to resolve.

Carolyn Gorman, spokeswoman for the Insurance Information Institute in Washington, said consumers should consider a policy if it would be a financial hardship to devote the many hours necessary to restore their identity and repair their credit report. If somebody stole money from the accounts, "this insurance is not going to pay you back."

LouAnn Busch-White, president of Florida-based Identity Theft Management Inc., said the law requires that losses sustained by the consumer on credit cards are capped at $50 per card. "Typically, that is covered by the credit grantor when they prove they were a

victim of fraud. Few identity-theft victims require the assistance of an attorney. So, the legal fee coverage is moot.

“The insurance company does not help correct the inaccuracies due to fraudulent activity appearing on the credit reports. That very time-consuming activity is left up to them. Nor do they get unlimited paid time from work to do it themselves. The policy usually stipulates a dollar amount of coverage for a limited period of time off from work.

"Outside of paying some of their wages—should a victim's job allow them to take off from work to deal with this problem—I don't see the benefit of specifically purchasing an insurance policy."

*Iris Taylor is a business columnist for the Richmond Times-Dispatch. Her Consumer Watch column appears weekly except for the first Sunday of the month.*

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# An Introduction to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

By Thomas L. Canary, Jr.
Mapother & Mapother, P.S.C.

Presented at Credit Professionals International District 5 Conference
Louisville, Kentucky, April 2005

## Preface

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("the Act") was 8 years in the making. The majority of the Act's provisions became effective on October 17, 2005. The genesis of the Act was the perception by many in the credit industry that many debtors filing for relief under Chapter 7 of the old Code could afford to repay their creditors in a Chapter 13 proceeding. As stated in the second sentence of the House Committee Report: "The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensure that the system is fair for both debtors and creditors."

The purpose of this outline is to give you a very brief overview of the changes in the Bankruptcy Code that will affect you most immediately. As with all new legislation, the exact meaning of many of the proposed changes is already the subject of debate. Only time will tell how exactly the Bankruptcy Courts will interpret and apply the Act.

## Notice to Creditors

One of the most irritating things, especially to larger creditors, is notices of bankruptcy from the debtor going to a lock box address, address on a statement or some other address where the creditor is not likely to receive the documents from the court. The Act now mandates that the debtor MUST send notices to the address designated by the creditor in communications with the debtor. Alternatively, notices must be sent to a preferred address provided to the court by the creditor. *11 U.S.C. §342*

This latter alternative will undoubtedly be used by larger, national creditors for purposes of centralizing their bankruptcy operations. The former alternative could be incorporated by creditors in their contracts, demand letters, etc. Creditors should take advantage of this change to improve their handling of bankruptcy cases, getting the matters into the hands of personnel trained to handle the cases at the earliest possible instances.

## Who may be a debtor under the Act?

***Mandatory Credit Counseling*** *(11 U.S. C. 109(h))*—Before an individual can file for bankruptcy relief they must complete Mandatory Credit Counseling. Within 180 days prior to filing their bankruptcy petition, the debtor must receive training from an approved, non-profit budget and credit counseling agency. This can be done individually, in a group, via the Internet or by phone. The agency must set out the opportunities for available credit counseling, and assist the debtor in completing a budget analysis. These agencies are to be approved by the U.S. Trustee. If the debtor does come up with a debt management plan and then later files bankruptcy, that plan must be filed with the court. If the debtor in a Chapter 13 does not complete a course in personal financial management, then his discharge can be denied.

*(Continued on page 7)*

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There are some exceptions to this rule whereby the debtor can file a petition without having received the counseling. If emergency situations arise ("exigent circumstances") such that the debtor cannot receive the counseling within five days of the filing of the petition, then the mandatory counseling can be waived. This must be certified to the court in writing. The debtor must then apply for the counseling within 30 days after the petition is filed. This period can be extended to 45 days with court approval.

Other exceptions exist to the Mandatory Counseling requirement. If the court determines that the debtor is unable to complete the counseling requirements due to disability (physical impairment), incapacity (mental illness or deficiency) or active military service, he can be excused from the counseling requirement.

***Means Testing*** *(11 U.S. C. 707 (b))*—This is probably the most widely touted change in the Bankruptcy Code. The trustee, or any creditor, may bring a motion to dismiss the petition if the debtor's income is above the state's median income. If the debtor has the means to make repayment to his creditors in a Chapter 13, the petition must be converted or it will be dismissed.

Get out your calculator—here is the calculation:

*If* the debtor's *current monthly income* (determined by an average of the previous six months' income)

*Less* secured payments, divided by 60,

*Less* priority debts (certain taxes, etc.), divided by 60,

*Less* allowed expenses permitted by the IRS,

*Less* certain allowed other expenses,

*Is greater than* a $100 per month Chapter 13 payment, then the debtor will be forced into a five-year Chapter 13 plan. Said another way, if the debtor can afford to pay $6,000 ($100 x 12 x 5 = $6,000) or more to his unsecured creditors, then he cannot file a Chapter 7 and must file a Chapter 13.

Since secured payments are deducted from the formula, debtors may have an incentive to load up on secured debt before they file. However, note that another portion of the Act states that an attorney, as a "debt relief agency", cannot advise a debtor to incur additional debt in contemplation of bankruptcy. This is the reason that the statute allows a trustee to move the court to dismiss or convert the case even if the debtor's income is below the state medium.

The IRS and median income figures are driven by the number of people in a household. This would include all the people occupying the dwelling unit. The debtor also can rebut a presumption of abuse by demonstrating special circumstances and require adjustments to these figures.

## Chapter 7 provisions

***Reaffirmation Agreements*** *(11 U.S.C. 524)*—The new reaffirmation provision "Strengthens the disclosure requirements for reaffirmation agreements (agreements by which debtors obligate themselves to repay otherwise dischargeable debts) so that debtors will be better informed about their rights and responsibilities." *House Committee Report, page 2*.

You will have to COMPLETELY retool your reaffirmation agreements, and the changes are substantial. You will have to state, in a conspicuous manner, the "Amount Reaffirmed", and "Annual Percentage Rate". You will also have to include a "Summary of the Reaffirmation Agreement" (which also may be disclosed in a conspicuous manner) as well as the phrase: "Before agreeing to reaffirm a debt, review these important disclosures."

You must also disclose a schedule of when the payments are to begin, the requirement that the

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reaffirmation agreement be filed with the court, detail the debtor's right to rescind and have a certification that the reaffirmation will not impose an undue hardship on the debtor. (These last two requirements are already in the Code). Hardship is presumed if the debtor's expenses, including reaffirmed debts, exceed their income. In that case, the debtor will have to explain to the court why they can afford the
payment. If the courts react to this situation like they do presently when a pro se debtor wishes to reaffirm a secured debt for more than the value of the collateral, the chances of getting these agreements approved will continue to be low.

On a positive note, the notorious "fourth option" [staying current and not reaffirming or redeeming] is prohibited under the Act. This is great news for those in West Virginia as the 4th Circuit allowed these "pay and ride" or "ride through" situations. Note, however, that it remains to be seen whether a state court judge will order turnover of collateral if the loan is current and the debtor has insurance. You should check to see if the filing of a bankruptcy petition is included in the "default" portion of your note. If not, you could be in a real predicament.

***Automatic Termination of the Stay*** *(11 U.S.C. 521(a)(2)(B) and (a)(6))*—The Statement of Intent filed by the debtor now has teeth. Within 30 days after the date set for the meeting of creditors, *11 U.S.C.. 521(a)(2)(B)* the debtor will have had to either reaffirm the debt or redeem the lien on the creditor's collateral.

If not, and the collateral is personal property (I.e.), this does not apply to debts secured by real estate), the bankruptcy stay is terminated. Note that this is different from *11 U.S.C. 521(a)(6)*. The time deadline there is 45 days after the first meeting, is only for purchase money loans, and is applicable only to "allowed" claims, which means you do not get the benefit of this statute unless you have filed a proof of claim (that is how your claim gets "allowed"). You need to tread carefully here.

There will be more pressure on the debtor to negotiate a reaffirmation agreement at the first meeting if they want to keep their collateral. It would behoove creditors to appear or send a representative to the first meeting to work out the terms of an agreement while all the parties are in one place and the motivation to reaffirm is high.

You may see an increase in debtors trying to redeem collateral. There is a company based in Cincinnati called *Redemption 722*. "722" is the section of the Bankruptcy Code that permits redemption. If you are faced with an attempt to redeem and the redemption is funded by this company, look closely. The values set by debtors for collateral on redeemed loans financed by Redemption 722 are frequently lower than you may estimate. If that is the case, you need to retain counsel to object to the motion.

Also on redemptions, make sure the funds will be paid to you by a date-certain. Redemption motions have been used in the past to delay the turn over of the vehicle. With the increased pressure of a looming termination of the stay, debtors may become more "imaginative" in the use of this Code section.

Additionally, the automatic stay will not apply to eviction proceedings where the debtor fails to pay rent, post petition. *11 U.S.C. 362 (b)(22) and 362(1)*

***Other Limitations on the Automatic Stay*** *(11 U.S.C. 727 and 1328)*—If a debtor files Chapter 7 or 13 within one year after the dismissal of a previous case, then the automatic stay will terminate 30 days after the filing of the petition. This is to reduce the number of serial filings that we have seen in recent years. Many times, debtors would file serial bankruptcies to avoid a foreclosure sale. The creditor would begin a foreclosure proceeding. On the eve of the sale, the debtor would file bankruptcy (usually a Chapter 13) without any real hope of success. The petition would be dismissed, the creditor would be on the eve of another sale only to have the debtor file again.

Under the new law, the stay would be terminated automatically within 30 days after the filing of the second bankruptcy.

The debtor can file a motion with the court to extend the stay. The debtor will have to demonstrate to the court that this most recent

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(Continued from page 8)

filing was not in bad faith. There are factors in the Code that the Court will examine to make this determination.

An exception to this rule is a dismissal based on the debtor's failure to pass the means test. If the debtor files a Chapter 7, flunks the means test, has his petition dismissed **and then files under another chapter**, the second bankruptcy is not subject to this 30-day rule.

***Discharge***—Under the current Code, a debtor may not file for Chapter 7 within six years of a previous Chapter 7 filing. Under the Act, the period is extended to eight years. *11 U.S.C. 727(a)(8)*

## Chapter 13

***Mandatory Debtor Education***
A debtor will not receive a Chapter 13 discharge unless he completes a course in personal financial management. The program must be approved by the U.S. Trustee. Between this educational requirement and that required before the debtor files for relief, it is evident that Congress has chosen to foist upon debtors in Bankruptcy Court what ALL Americans need to receive—old-fashioned civics lessons that show you the uses and abuses of credit, how to handle your check book, etc. It is a pity that some of the money spent on this bill could not be put in the school system so all young adults could get benefit of the education "reserved" for those ALREADY in financial problems. Recidivism in the financial public

domain shall be a thing of the past under the Act—and next… world peace!

***Collateral valuation*** *(11 U.S.C. 506(a)(2))*—Collateral will now be valued at retail, with no reduction for resale, warranties, etc. There was a split of authority on this issue even after the Supreme Court decision of **In re Rash** *520 U.S. 953 (1997)*. For instance, some courts used retail, some used the midpoint between wholesale and retail. While the valuation method has been decided, expect there to be a continuing debate over the valuation guide to be used. Some courts will use NADA, others Kelly, still others Black or Red book. While this change in the Code will settle the dispute between the different jurisdictions, it will not be a cure-all and regional differences will still exist.

***Anti-cram down for certain auto loans***—First, the Act states that a creditor does not have to release its lien until its entire claim is paid—both the secured and unsecured portion. *11 U.S.C. 1325 (a)(5)* This settles another dispute between the courts and is a vast improvement given the failure rate of Chapter l3 bankruptcies.

Also, a debtor in a Chapter 13 may not cram down a **purchase money** auto loan that was taken out within 910 days (30 months) of the bankruptcy filing. *11 U.S.C. 1325(a)(9), continued.* This means that the debtor must pay the entire remaining balance of the loan by the end of the bankruptcy. Many persons to whom I have talked think that this provision is subject to other interpretations, but for now, this is the position that I would take.

***More prohibitions against serial filings*** *(11 U.S.C. 1328(f))*—The Act reduces the debtor's ability to file a "Chapter 20"—a Chapter 7 followed by a Chapter 13. A debtor will not receive a discharge in a Chapter 13 if he obtained a discharge in a Chapter 7, 11 or 12 within 4 years of the current Chapter 13 filing. If the debtor received a discharge in a Chapter 13 within 2 years of another Chapter 13 filing, no discharge will be granted in the current petition. Note that this does not prevent the debtor from filing the bankruptcy and getting the benefits of the automatic stay, just that the debts in the petition will not be discharged.

***Super-discharge reduced*** *(11 U.S.C. 1328(a)2))*—Many debts that could not be discharged in a Chapter 7 could be discharged in a Chapter 13. "The Act reduces the number of debts that can be discharged in Chapter 13s. These include, but are not limited to: debts incurred by fraud or false statements, unscheduled debts, domestic support payments, student loans, drunk driving injuries,

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criminal restitutions and fines, civil restitutions or fines awarded for willful and malicious injuries, etc.

## Miscellaneous provisions

***Homestead Exemptions***—Debtors would often move to states and purchase a home where the homestead exemptions were generous. This would allow the debtor to shield assets that he would otherwise use. The Act allows the debtor to choose the exemptions of the state where he has lived for the 730 days before he filed bankruptcy. If the debtor has moved within that 730-day period, the debtor can choose the homestead exemption of the state where he lived the majority of the time for the 180 days prior to the 730-day period.

Note also that as of June 20, 2005, Kentucky allows the debtor to choose either the state or federal exemptions listed in the Code *KRS 427.170*. Also, the amount of the homestead exemption in Kentucky has not changed from it's current $5,000 per debtor level. However, Bankruptcy Code section *11 U.S.C. 522(d)(1)* allows an exemption of $18,450 per debtor. Said another way, if husband and wife debtors choose the federal bankruptcy exemptions, they can shield up to $36,900 equity in their real estate.

***Debts presumed non-dischargeable*** *(11 U.S.C. 523(a)(2)(C))*—The Act lowers the thresholds in the Code for certain debts that will be presumed non-dischargeable. Luxury goods owed to a single creditor totaling more than $500 (formerly $l,150) incurred within 90 days (formerly 60 days) of the bankruptcy and cash advances on an open-end plan totaling more than $750 (formerly $1,225) incurred within 70 days (formerly 60 days) of the filing of the bankruptcy are presumed non-dischargeable. This is a presumption only. You must still file an Adversary Proceeding and have the court render a judgment holding the debt non-dischargeable. The presumptions simply shift the burden of proof. Said another way, the debtor must prove that the debt should be discharged rather than the creditor having to prove that the debt should not be discharged.

## Conclusion

This is a very brief overview of only a few changes to the Bankruptcy Code. Time will tell how these changes will be interpreted by the courts. Rumor has it that Congress is at work on a technical amendment bill to fill in some gaps and more fully explain some of the seeming inconsistencies in the Act. Stay tuned for further updates.

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# Starting a Collection Agency or Your own business: What you need to know

By Michelle Dunn

If you are wondering if you should or can open your own collection agency or your own business, the answer is yes, you can!

There are some things you should do before opening your own agency or business.

If you decide on a debt collection agency, you should have experience in the collection industry. You must know what type of business the collection business is before you can understand what you are getting into. You need to know the day-to-day activities of collections. You need to know the laws in the state you are in and the states you will be collecting in as well as Federal laws you must follow. You want to have experience dealing with people and learn some negotiation and mediation skills.

You should also be ready to spend a lot of time getting people interested in your business. If you have worked in the industry for other people, new clients will know you have experience and be more comfortable placing accounts with you. If you don't have any experience, you need to build credibility so potential clients will know you can do the job and do it well.

One way to learn more about the industry for free is to join www.credit-and-collections.com which is my free list and website for business people in the credit and collection field. I created this list to share ideas, information, and offer an opportunity to network. This list is for small and large business owners, entrepreneurs and anyone in the credit and collections field. The website offers a free e-book with letters, forms and information on starting your own agency or business. There are many people on the list who have been in the collection industry for over 35 years and some who are trying to start an agency. There are credit managers, business owners and entrepreneurs. You can ask a question and get many answers which are invaluable information.

When I started my collection agency in 1998, I could not find the answers to my questions, which is why I created this list and the website. It has been around now for almost 10 years and we have over 750 members. I learn something from this group every day.

### What is a Collection Agency?

A collection agency is a service business. Bill collectors act as agents for clients who could not get paid for products or services that they provided their customers. A business places past due accounts with an agency, and the agency tries to collect for them.

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The agency collects what is due on the bill and keeps a commission on what they collected, and then sends the clients the rest of the money. Some agencies charge a flat monthly fee and offer different stages or types of collection efforts. You will want to search the internet for agencies and request their information so you can see what they charge, what services they offer and how they present themselves.

Agencies can collect for hospitals, physicians, lawyers, retailers, service providers, credit card debt, loans and many other types of businesses. Any business that extends credit or accepts checks may have a need for a collection agency.

Collection agencies normally provide asset searches, skip tracing, credit reporting, debt collection services, demand letters, public record searches and various other services which might include a letter service or accounts receivable outsourcing.

What you decide to provide is entirely up to you. Some agencies only offer one service, while others have a huge list of services they provide.

You will have to write a business plan. If you are going to borrow money to start your agency or start any business, you will need a business plan to show the bank. Usually a business plan is made up of:

An Executive Summary
A Business description
Marketing Strategies
Competitive analysis
Operations and management plans
Financial statements.

I have an example of a Business Plan and a Marketing Plan in my book, *How to make money collecting money, Starting a Collection Agency.* These can be customized to fit your particular business.

You should also include a cover or folder for your business plan. Include a title page and a table of contents. This will be very professional and impress any bank you may present it to.

You should LOVE collection work. You either love it or hate it! If you love it, you will be passionate about making your business work.

You will need to have communication and investigative skills. As in any business, you will need to be organized, have empathy, persistence, customer service skills and master the art of negotiation.

You will want to have your marketing plan in place before approaching a bank for a loan. This way you can include your marketing strategies in your business plan. A marketing plan normally consists of:

- A description of your target market
- Description of competitors
- Description of your services
- Your marketing budget
- Pricing strategy

You will need to market your agency or business to obtain clients. You first need to know who your potential clients are and who you want as customers.

You can look in your local yellow pages and newspapers. Any business that extends credit may need the service of a collection agency. This could include banks, oil companies, contractors, florists, printing companies and more. If you want to collect on

(Continued on page 13)

(Continued from page 12)

bad checks you can also target any business that accepts checks as a form of payment.

You then need to decide what methods you want to use to market your business. Do you want to use direct mail, ads in local papers or magazines, a website?

What is your budget? Once you know your budget, you will know what you can afford and then you have to decide what will give you the biggest return for your money.

To do this you need to research your potential clients. Ask them if they use an agency now. And ask them how they heard about that agency and if they are happy with the service. Ask them, if there was one thing they could change, what would it be? Then you can offer that as part of your service.

Remember when marketing any business, you must follow up. If you don't follow up, the potential client may think you are not really interested or that, if you aren't persistent with them, you may not be with debtors.

It is a good idea for anyone who is thinking about starting their own business—whether it is a debt collection agency or any other business—to join associations in their field, such as Credit Professionals International. The best association I joined when I started my agency was The American Collectors Association. You may also want to join your local chamber of commerce or rotary club.

There are also many online venues where you can network and learn at little or no cost.

You may want to hire a consultant to ask a few key questions before you decide on the type of business you want to start or for tips on working from home with children, and appearing professional, or renting office space and hiring employees.

When you join Credit & Collections, you can purchase deeply discounted consulting from me on Starting a Collection Agency or Starting a Home Based Business.

Maybe there is someone in your local area that has a business similar to the one you would like to open that would consider being a mentor.

Remember, research, networking and patience are very important. I cannot stress this enough. Ask questions and ask for help, if you don't know. I just love when someone emails me to ask me a question about starting their business or agency. I love it because it is so exciting!

I remember when I was starting my agency; I had to create Credit & Collections to have a group of people to ask questions. I didn't start the group because I knew everything about the industry, I created it to attract all the people I know who knew more than I did and I wanted to learn from them.

I know how exciting and scared I was to start my agency so I know the excitement and dread the people who email me are feeling. I know they can do it, because I did

(Continued on page 14)

*(Continued from page 13)*

and I am happy to help anyone succeed. I am proud of all I have done and want more people to feel empowered and successful.

Starting any business is exciting and frightening. You can do it. Remember to be diligent, do your research, work smart, ask questions and you will be successful.

*Michelle Dunn has over 17 years experience in credit and debt collection. She is the founder and president of* ***Never Dunn Publishing, LLC****, is a writer, publisher, consultant and the Editorial Advisor for* ***Eli Financial Debt Collection Compliance Alert Newsletter****.*

*Michelle started M.A.D. Collection Agency in January 1998 and ran it successfully until she sold it in December 2004 to write and consult full time. She owns and runs www.Credit-and-Collections.com, an online community for credit and business professionals with over 750 members.*

*She has been featured in* ***Ladies Home Journal, PC World, Home Business Magazine, Home Business Journal, Entrepreneur, The Wall Street Journal, NH Business Review, Professional Collector, and in Home Based Business for Dummies, Shameless Marketing for Brazen Hussies****. She was a featured guest on (NPR) National Public Radio and the CBS Early Show and has been in many newspapers and magazines nationwide.*

*She has many published articles and five published books to add to her list of accomplishments.*

*Michelle has recently signed a contract with Entrepreneur Press to write a book for their Ultimate Series, titled "The Ultimate Book of Credit & Collections." Learn more or order any of her books at www.michelledunn.com or www.credit-and-collections.com*

***NOTE: Michelle will be conducting an education session at the 2006 Credit Professionals Interational Conference, June 22-25, in Wichita, KS. She will present her topic, "Become a Squeaky Wheel," on Friday, June 23.***

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# 13 Tools for Resolving Conflict in the Workplace, with Customers and in Life

By Lee Jay Berman

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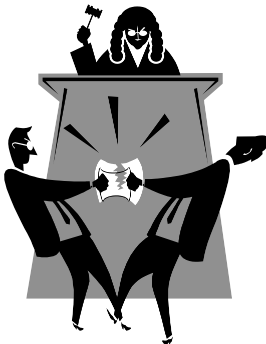
Conflict happens. It is inevitable. It is going to happen whenever you have people with different expectations. This makes conflict management critical, whether avoiding arguments, disputes, lasting conflict or ultimately, litigation. Conflict can be avoided if steps are taken early in a discussion to diffuse anger and facilitate communication, and it can be resolved by applying a series of thoughtfully applied steps.

As a full-time mediator and trainer in the fields of negotiation and conflict resolution, I see conflict in its final stages—full blown litigation or on the verge of it in pre-litigation mode. What I have learned in seeing these disputes for 10 years is that most of them could have been resolved in the earliest stages if the people involved applied some of the skills that mediators use to resolve conflict. And wouldn't it be great if companies could resolve these disputes before each side spent hundreds of thousands in litigation costs, before the employee was terminated or before the customer or working relationship was gone forever?



Here are some tools for avoiding and resolving disputes in the early stages, before they become full-blown conflicts:

## 1. Stay Calm

Thomas Jefferson said, "Nothing gives one so much advantage over another as to remain always cool and unruffled under all circumstances." The thing that leads to conflict is escalation. What starts people escalating is their anger. Most of us stop listening to understand as we get angry. Instead, we start listening in order to argue back. Remaining calm is essential for performing these tools. To remain calm, it helps to look at the big picture. If you think about it, most every dispute gets resolved eventually. So when conflict inevitably happens, it is helpful to stop and think that, chances are, it is going to be resolved eventually. As such, why not begin problem solving now?

Finally, it is a fact that in our busy lives with rush hour traffic, cell phones, PDAs, overfilled e-mail boxes, too many clients and not enough support, that we are all a little more stressed than we would like to be.

When a conflict arises, one of the most beneficial things you can do is to ask yourself, "What might I be bringing to the dispute?" We can usually look at another person and figure that maybe he/she had a conflict at home or that he/she has been under tremendous pressure. However, we are not usually self-aware enough to ask ourselves what we might have going on. It is important in avoiding later embarrassment by checking in with our own personal boiling point before responding.

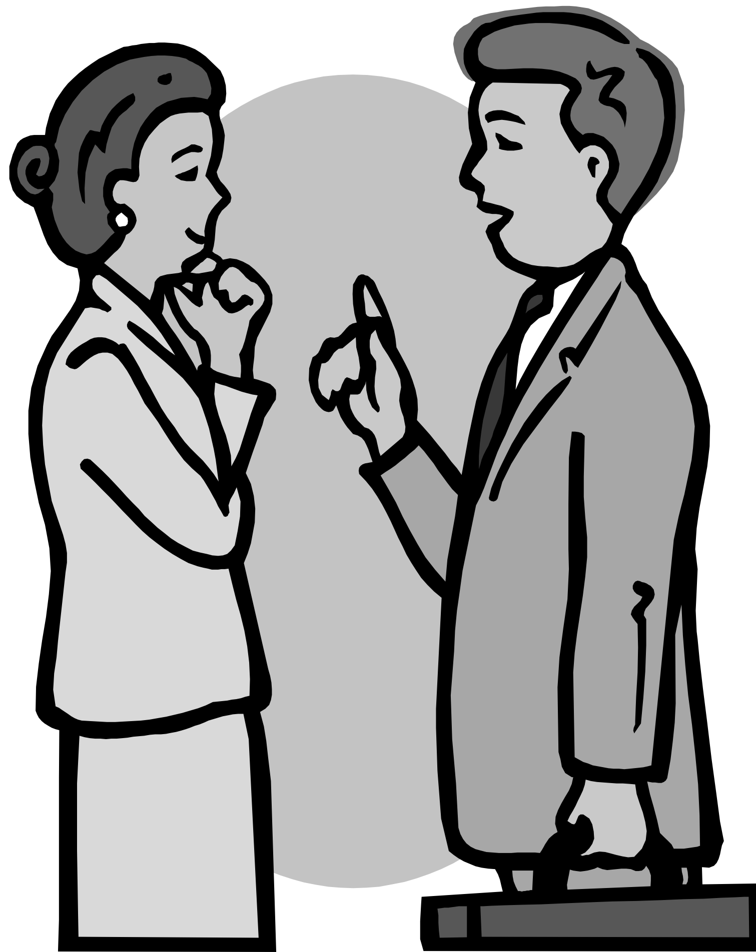
(Continued on page 17)

(Continued from page 16)

## 2. Listen to Understand.

Now, picture a dispute in which you were recently involved. Maybe it was this morning leaving the house, with a co-worker or client or even with a family member. As you replay that experience, ask yourself how much listening was going on. My bet is that any listening was only being done to formulate an argument back to prove your point. When most of us get into a dispute, the first thing we do is stop listening.

The only way to settle a dispute or solve any kind of a problem is to listen carefully to what the other person is saying. Perhaps they will surprise you with reason, or their point is actually true. In the mediations that I do, I often learn what people's underlying interests are by letting them go on and on telling their perspective of an issue until they give me the one thing that is standing in the way of them resolving it. They may start out by degrading the product and personalizing it by saying those of us who delivered it are all incompetent, but I find that this is little more than their anger speaking. What they really want is their product fixed, not to insult us personally.



Psychologists tell us that anger is a secondary emotion and that it is usually triggered as a defense mechanism to cover up hurt or fear. When someone is angry, there is usually some hurt or fear that he/she is embarrassed about, or perhaps even unaware of because the anger is so all consuming. In order to diffuse people's anger, you must listen to them. Hear them out. Let them go until they have run out of gas. Let them vent as long as they can until they begin to calm down. You then will see a person start to slow down some, and begin to feel safe enough to finally tell you that what frustrated him or her so much was that the salesperson never returned any phone calls, and/or the customer service person kept trying to place blame elsewhere, rather than taking responsibility and apologizing for the product being unacceptable.

The best thing you can do to get people to the point where they are willing to show some vulnerability and trust you with some of the real reasons why they are upset is to engage in "Active Listening." Active listening means giving them active physical and verbal sights that you are with them and understand what they are saying. Simple things like nodding and saying, "uh huh" or "OK, go on" can make the speaker feel as if his/her story is welcomed by you and that you want to continue. On the phone, people hear dead silence and cannot read your reaction to their complaints and thoughts. Given that we all sometimes fear the worst, people tend to shut down and stop feeling it is safe to continue telling their story.

My friend and colleague Jim Melamed, a divorce mediator and trainer based in Eugene, Ore., said, "You cannot effectively

(Continued on page 18)

(Continued from page 17)

move toward conflict resolution until each participant experiences him/herself to be fully heard with regard to their perspective—what they want and why." That means, if someone says that the product he/she bought from you is unacceptable, and they are interrupted and asked what would be acceptable before they have finished telling all about the problem, that person gets the message that all you want to do is fix the problem. The impression is that you do not care about them or the problem they had with your product, and that can feel a little like being swept under the carpet. A good customer service person in a situation like this would let the client finish before asking if there were any other problems. This may seem counter-intuitive because it might bring on even more of the same, but this is what you want. People build trust as they are listened to. If they had another problem with the delivery timing or any other facet of the transaction, this is when you need to hear it—at the outset, not later once you feel as if you have met all of their original concerns. The only way to solve a problem is to get all of the broken pieces on the table at once before you begin trying to "glue it back together."

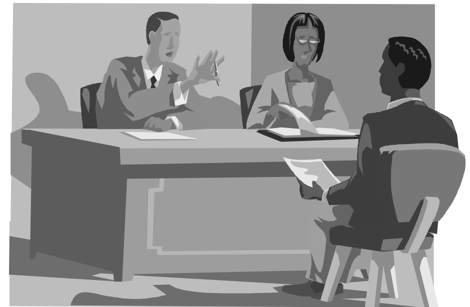
The most useful phrases in this part of the process (what mediators call the "Opening Statement") are questions such as, "Can I ask you—what about that bothered you so much? Or "What about that was so important to you?" These invite people to go deeper into the problem and tell you what the "real" problem is. Usually, this is where you hear that their boss is upset and they are afraid for their job or some underlying concern. This is a problem that might be handled with something as simple as a letter of apology, from you, the salesman or the president of your company, addressed to them with a copy to their boss, taking full responsibility and apologizing for the problem. Then, you will have a customer you might be able to keep.

### 3. Accentuate the Positive.

It is important to find some commonalities, or create them, between you and the person on the other end. It is helpful and empathetic to say, "Oh boy, I know what you are going through. I've had a similar situation just recently. Let me see what I can do about this." This serves to normalize the situation. It tells someone that he/she is not the only one who has gone through this and that his or her reaction to it is normal. That calms people right away.

### 4. State Your Case Tactfully

The key here is to help people understand your perspective on things without making them defensive. To the extent you can disarm them, they will be more able to hear what you are really saying. A couple of tips are to own what is yours—apologize for what you or your team did wrong and do it first. This enables them to hear what you have to say next. Also, try not to state issues of difference as fact. Leave a little benefit of the doubt. Rather than insisting something arrived on schedule, it is better to acknowledge any room for doubt by acknowledging, "My information shows them arriving on schedule. I'll have to take a closer look into this." While you may still be right, clearly you have to gather more information to convince them of that, and if you are not right, then you do not have to apologize for misstating things.



It also is helpful to state your position along with your interests. What that means is that instead of maintaining that there is nothing wrong with your product, which is purely argumentative and does not offer any support for your position, it is better to offer something helpful, such as providing another perspective by sending someone over to inspect the product in person. That way, the customer can show and describe exactly why the product is not working as necessary.

Your position is the bottom line of what you are willing to do. Your interests are the reasons behind that decision. For example, it

(Continued on page 19)

(Continued from page 18)

might be your position that you cannot take any product back or rescind the contract. However, your reason for that—your interest—may be that your bonus is tied directly to your returns, and that you have every incentive in the world to solve this problem another way. You may also offer what some of those things are, so that you are not just taking away something from them or denying their request, but offering positive alternatives in its place.

One way to do this is to use “I Messages.” An “I” message sounds like, “When you didn’t come home last night, your father and I got really worried. What we would like you to do next time is call if you’re going to be late, so that we know you’re OK because we love you and care about you.” That is how most of our parents were when we were teenagers, right? Seriously, can you imagine how we would have reacted if they had put it this way instead of the scenario we remember of being grounded for life while stomping off to bed? “I” messages are important because they describe the experience through the speaker’s eyes, rather than simply the position (in this case the punishment). That disarms the person you are speaking to, and it takes the fight out of their next statement back to you.

## 5. Attack the Problem, Not the Person

Your points will be heard more clearly if you can depersonalize your comments and point only at the issue. Rather than accusing people of “always messing things up,” it is better to say, “We’ll have to take a closer look at why this keeps happening.” In most statements that we make in a dispute, we are fighting with our

own anger and are tempted to put a zinger into the point we are trying to get across. You will be heard better and improve your chances of resolving the issue the way you want if you can catch yourself and take the zinger out. Obviously, this is easier with e-mail and requires great concentration when in a face-to-face disagreement.

## 6. Avoid the Blame Game

Assigning blame is only helpful in one instance in problem solving—if you assign it to yourself. Generally speaking, figuring out whose fault something is does not do any good if the goal is to fix a problem. It is a diversion and sometimes a costly one because if a person feels blamed, he/she often checks out of a conversation. The trick to resolving clashes is to focus on problem solving, rather than pointing fingers. Focus on what you and the others can do to solve a problem and make it better, and it will be behind you before you know it.

## 7. Focus on the Future, Not the Past

In the past tense, we have the purchase order, the contract, the agreement and the deal as it was understood by all involved. The present and future tenses are where the solution ends. Rather than focusing on what went wrong or who should have done what, the secret to dispute resolution is to treat it like problem solving and focus on what can be done to resolve the problem. Once that is done, companies can look to the past tense to analyze what went wrong and how to improve quality control and efficiency. However, when there is a problem that has an angry customer or a disgruntled employee, the solution is all that anyone is interested in.

## 8. Ask the Right Kind of Questions

Questions such as “Why is that?” or “What did you think it would be?” make a person whom you are talking to defensive. If you want someone to answer you with real information, rather than just arguing back, it is best to give them a little information first. For example, “Since I don’t have a copy of the P.O. in front of me, it would help me to investigate this if you could tell me

(Continued on page 20)

(Continued from page 19)

more about how the colors on your order are described." Telling them why you are asking, puts your intent first, so they don't have to guess it. This questioning style tells a person that you are trying to do your job and to figure out some facts to get to reach a solution. By delivering your request in a posed and attentive tone, it makes the person you are asking less defensive and gets you more of what

you want.

The other type of question that is especially helpful when you are trying to gather information is an open-ended question. These are the opposite of directive questions, and they invite the other person to tell you what he or she thinks is important about the situation. "Can you tell me what happened from the beginning?" or "Sounds as if this was really frustrating for you" can give you information that you might later use to problem solve.

## 9. Pick Your Battles

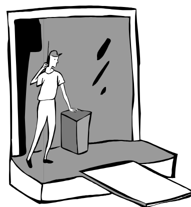
It is also important when asking questions to remember to Pick Your Battles. Human nature makes us want to be right, even to the point of being defensive or arguing points that do not matter in the big picture. It is even fair game to ask the other person, "On a scale of one-to-ten, how important is this issue to you?" If an issue is a five to you and a nine to the person you are talking to, it is best to give that point up and use the same scale when an item is really important to you. After all, business relations are, like my brother's future father-in-law once told him about marriage, "a 60-60 proposition." Most people think it is supposed to be 50-50, but the truth is, when adjusted for each person's perspective on how much they give vs. how much they receive, it really is a 60-60 proposition. Another marital proposition is also helpful here, do you want to be right, or do you want to be happy?

## 10. Link Offers

Car salesmen do this all the time. They ask you what you want your monthly payment to be and then set the price of the car and the interest rate on the loan or lease so that they can match your monthly payment. Essentially, it's a way of saying, "I can either do this or that, which would be better for you?" It really is just sales skills—giving people the choice between two positives, so that they feel as if you are trying to help.

## 11. Be Creative

Brainstorm. Remember that everything is negotiable. Feel free to think outside of the box in order to expand the pie. Make it so that no idea is too far fetched. Being



creative with resolutions takes longer, but can yield a true win-win solution. The best solution to a dispute is to get more business out of it. As such, one common problem-solving technique is to propose that instead of a cash refund, give clients a deep discount on future orders in order to show what a good job you are capable of doing for them. Many of the lawsuits I settle come away with win-win solutions, where instead of just compromising, we actually collaborate to reach a solution that benefits everyone. This requires listening when asking the open-ended questions and gathering morsels of good information that you will later use to formulate proposals that meet their interests. For example, you might learn about particulars that affected an order. From here, you can propose creative solutions that replace things such as broken items, or instead of using the money to re-do the entire order, you can use less money to ship a few dozen shirts with their logo on them so that your counterpart can look like a hero in front of the boss. These kinds of fixes make clients look good and keep them loyal to you, even after an initial dispute.

## 12. Be Confident

You can do this! Many people are afraid of confrontation and shy away from it. I have taught everyone, from housewives and high school grads to named senior partners in law firms and CEOs, how to do these simple steps. The

(Continued on page 21)

(Continued from page 20)

process works. All you have to do is follow the steps.

Furthermore, you must do this. Now that you have these tools, it is imperative that you do something about it. You owe it to your customers and your co-workers.

## 13.Celebrate Agreement!

This kind of negotiation is a hard process. It requires two people to remain in an uncomfortable, potentially confrontational position for a long time to rebuild trust and be creative while trying to figure out the best, rather than the fastest, solution. Once it is accomplished, both you and the person you are talking to deserve a good pat on the back. There is nothing wrong with going to lunch or dinner to celebrate the resolution of a dispute that could have been destructive, but that ended with a win-win solution where everyone was satisfied. This is an important process for avoiding more serious disputes such as lawsuits and losing hard-earned customers. Congratulate yourself and your partner in this solution.

After all, nothing is more important than your company and its survival. Nothing is better for your company's survival than learning to make peace and resolve the inevitable disputes that will arise. Learn to cultivate peace with customers, suppliers, employees, labor and management.

Utilizing these tools takes patience and generally requires changing old behaviors. However, if people on the front lines, in human resources, customer service and client relations, use simple tools such as these, they would resolve most disputes at that level, keeping them out of the legal department and out of the mediator's office.

*Lee Jay Berman is a full-time mediator and trainer. He is director of the "Mediating the Litigated Case" program at the Straus Institute for Dispute Resolution at Pepperdine University School of Law. With the faculty of the Strauss Institute, he provides workshops and training courses for businesses in the areas of strategic negotiation skills and conflict resolution skills. He can be reached at leejay@mediationtools.com.*

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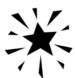

# How Effective Will Creditors' Committees Be Under the New Bankruptcy Law?

By Michael R. King, Esq.

**QUESTION:**
Will creditors' committees be more effective representatives of general unsecured creditors in Chapter 11 reorganizations under the new bankruptcy provisions?

**ANSWER:**
Changes to the membership of creditors' committees will be easier and committees will have greater responsibilities to the creditors not serving on the committee, but these changes may or may not make creditors' committees more effective.

Whether the creditors' committee is an effective advocate for the rights of general unsecured creditors or simply an additional administrative expense which further depletes the assets available for distribution, depends upon the case and actions of the parties involved.

Often a well-organized unsecured creditors' committee can be a powerful advocate in shaping a plan of reorganization which is more favorable to unsecured creditors. Creditors' committees can also be a force driving recoveries from avoidances of fraudulent transfers, preferential payment claims or excessive insider bonus compensation.

On the other hand, unsecured creditors' committees have the potential to promote additional antagonistic and unproductive issues and litigation. In such situations, the administrative priority claims generated by professional advisors to the creditors' committee may erode the limited assets available for distribution to unsecured creditors.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 creates new rights for creditors not appointed to the creditors' committee. The Act also makes it easier to change the members of a committee and easier to add members to a committee. In addition, the Act adds responsibilities and duties for committees to fulfill. Previously, only the U.S. Trustee had authority to change committee membership. Section 1102(a)(4) now allows a party in interest to seek an order from the bankruptcy judge directing the U.S. Trustee to change the membership of a committee if the judge decides that the change is necessary to ensure adequate representation of unsecured creditors and equity holders.

In addition, the court also has the authority to direct the U.S. Trustee to increase the number of members of the committee to include creditors that may be small business concerns with claims that may be smaller than those of the other members of the committee, but which are disproportionately large for the small creditor. For example, if Gigantic Manufacturing Company and other representatives of the Fortune 100 hold all of the large claims against the estate, but Mom and Pop, LLC has a claim equivalent to 30 percent of its annual gross revenue, then Mom and Pop can be placed on the committee by court order.

In the past, changing the membership of creditors' committees has been virtually impossible. Thus, where groups of creditors were unrepresented, the only remedy was a court order for the appointment of an additional committee. Even if an "Investors Committee," "Equity Holders Committee,"

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"Bond Holders Committee," or "Tenants Committee," were established by the court, the U.S. Trustee has sole authority to appoint the members. Now, any party in interest can ask the court to change the membership of a committee if it is not representative of creditors.

Furthermore, creditors' committees will now be required to seek comments from the represented creditors and to receive, and presumably consider, such comments and directions from their peers not serving on the committee. These provisions are fairly vague and we will need to look to future cases and practices to determine the actual scope of the duty to solicit and receive comments from other creditors. Will the committee be required to take votes or to follow the comments and directions from creditors not serving on the committee? Will this ultimately cost the estate more money? Who knows?

Creditors' committees must now also provide access to information to the other creditors in the class. Those other creditors can seek an order from the judge compelling such additional reporting or disclosure of the information that the committee has obtained. While, in the past, creditors not sitting on committees have often complained of lack of information, many were no doubt thankful to not deal with the mountains of data and paper.

In fact, the requirement that committees disseminate information obtained from debtors to all creditors in the class, may make it difficult for committees to obtain sensitive, confidential and proprietary financial information from debtors. Debtors will not want confidential financial data broadcast so widely. Although the bankruptcy code requires members of committees to keep information received confidential, other creditors in the class do not have fiduciary duties of confidentiality. The Act doesn't seem to allow a committee to refuse to release information and it provides no guidance for courts about orders conditioning such disclosures of information. One can readily anticipate that this new disclosure requirement will generate reams of paper and a great deal of litigation, which may prove to be counterproductive to successful reorganization efforts.

Despite the changes to the bankruptcy code, the decision whether to serve on a creditors' committee will still vary from case to case. Creditors will need to decide whether undertaking additional fiduciary duties and disclosure duties to the full class of creditors is worth "having a seat at the table" to try to influence the reorganization. Often creditors may properly decide that being able to aggressively pursue their own best interests without the fiduciary burden of responsibility to all other creditors might be a better course. And whether having a committee at all is a good thing will also continue to vary from case to case.

If you have any questions about organizing, serving on, or otherwise dealing with a creditors' committee, please call me.

*Michael R. King, Esq., is a founding partner of Gammage & Burnham, P.L.C., a Phoenix law firm with diverse areas of emphasis. His practice primarily centers around bankruptcy and creditors' rights, commercial litigation, including uniform commercial code cases and real estate and business law. He is a former member of the Creditor/Debtor Rights Committee and is a current member of the Bankruptcy, Real Estate and Construction Law Sections of the State Bar of Arizona. He is the past Chairman of the Board of Trustees of the Maricopa County Bar Foundation. He is an active alumnus of the University of Arizona, where he received his B.A. and J.D. degrees, with distinction and with high distinction. He is also an at-large member of Credit Professionals International.*

# Changes for Military Debtors & Creditors

By Brigadier General Harry B. Burchstead
And Lieutenant Colonel Barry J. Bernstein

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We are a Nation at war. Protections for members of the Armed Services (servicemembers) in creditor-debtor relations have changed dramatically. Today's commercial world does not reflect the world during prior conflicts and the law itself has changed. Against this backdrop, National Guardsmen and Reservists have been mobilized in the largest number since World War II. These factors combine to create an entirely new atmosphere for credit law in dealing with servicemembers.

In World War II, the law was simpler, the financial world was less complex, and the massive scale of deployment ensured most lawyers were well versed in the legal protections afforded military personnel. Since then, fewer attorneys have needed to apply these protections. By the time of Desert Storm in 1991, only those in military towns or targeting servicemembers regularly dealt with credit and legal issues of the military. Consequently, many in today's legal and credit communities know little of protections for servicemembers.

Today, we are in an era of increased military deployment and reliance on reserve forces. The Global War on Terrorism (GWOT) has no end in sight and, since 2001, the Reserves and National Guard are already mobilized in their largest number since World War II. About 40 percent of the servicemembers deployed to Iraq or Kuwait today are Guardsmen or Reservists. Add the large source of the manpower in Afghanistan, the Balkans and elsewhere, and citizen solders are active across the globe.

The deployment of citizen soldiers from small town armories and reserve centers makes all of America a military town. Most Guard and Reserve soldiers had financial obligations prior to being mobilized, and now have unique protections unavailable before that status. A pre-9/11 practitioner away from military bases could be ignorant of the protections afforded servicemembers, whereas the post-9/11 counterpart does not have such luxury. The realities of today are that there are two types of practitioners: those that have already faced the new issues and those that will.

In addition to the representation problem is the increased complexity of today's financial world. While basic protections of 1940 remain, the law has changed by a major court decision and new federal legislation. Today's complex commercial atmosphere guarantees new problems for those relying on old knowledge. Those unprepared for these changes face great liability for that ignorance.

## Foundation

Federal and state statutes provide special protection for the servicemember. These protections place burdens on employers, creditors, and the courts. The federal ability to place these on the public is constitutional under Article 1, §8 (power to raise and support military forces). The majority of case law centers on the old Soldier's and Sailor's Civil Relief Act (SSCRA) of 1940 and the Uniformed Services Employment and Reemployment Act (USERRA) of 1994. *50 U.S.C. 501-591 and 38 U.S.C. 4301-4333 respectively.* The U.S. Supreme

*(Continued on page 25)*

(Continued from page 24)

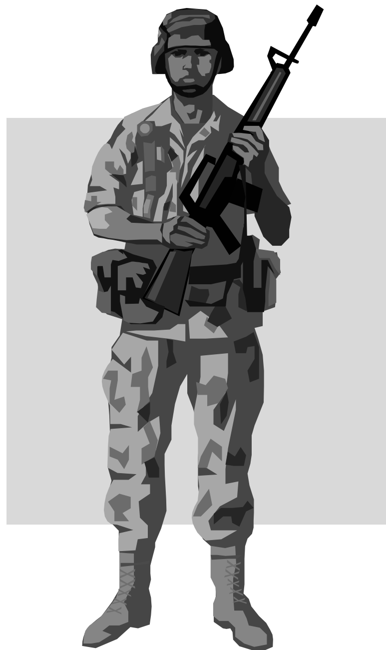
Court determined such laws should "be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Boone v Lightner,* 391 U.S. 571,575 (1943). Also see *LeMaistre v. Leffers,* 333 U.S. 1, 6 (1948) "The act must be read with an eye friendly to those who dropped their affairs to answer their country's call."

The basic premise of the Acts is that a servicemember shouldn't have to defend himself or herself while on military duty away from the Court. The public policy is that military personnel should remain focused on their military mission and duties without distraction for such issues at home. Federal civil relief acts date back to the Civil War. The Act enacted for World War II did not end with the Axis surrender and, in 1949, it was made permanent. It remained with little change for over fifty years.

Following Desert Storm in 1991, creditors began to challenge areas of the SSCRA of 1940. What appeared clear in the financial world of the 1940's suddenly appeared ambiguous in the modern financial world. The availability of credit, non-traditional lenders, interstate banking, leasing options, flexible interest rates, and other modern practices made the 1940 Act subject to interpretation.

## Cathey

The test of the old SSCRA of 1940 in the modern financial world came in *Cathey v. First Republic Bank et al. Civil action No. CV00-2001-M, U.S. Dist., Lexis 1150 (W.D. La. 2001).* In this matter, a reserve soldier was mobilized for duty in Bosnia and applied for the reduced interest rate of 6 percent. It was a significant corporate loan but was personally guaranteed by the servicemember. Further, it was cross-collateralized with other assets and a mortgage on the



soldier's home. The bank denied the reduction of interest, the soldier's business failed in large part to his absence for military service, and the bank pursued the personal guarantee and other collateral. The bank began foreclosure proceedings on the debtor's home, and the debtor filed for bankruptcy protection. The soldier then pursued an action against the bank for non-compliance with the SSCRA of 1940 in federal court. In the period prior to final judgment, the original credit had been sold to a larger bank.

The bank (creditor) argued that the SSCRA only applied to personal loans, and a personal guaranty of a commercial loan should be excluded from protection. The creditor argued that the guarantor was not a real party to the action, but that the corporation was the party without the personal protections offered in the Act. The bank also claimed that since the servicemember was only one of several guarantors, the other guarantors divested the protection. The bank further argued that the servicemember did not have the protection of the Act, because he had joined the reserves before he entered into the contract, and that his subsequent mobilization did not create a new protection. As a back up to its defenses, the creditor posited that the Act did not create a private cause of action, and the debtor could not maintain suit. As an additional back up, the creditor argued that damages were limited to a refund alone, and any consequential, exemplary, or expectancy damages were not allowed. These defenses raised by the bank in Cathey were common arguments of other creditors in the 1990's, but had never fully been litigated.

The Court granted summary judgment against the creditor on all defenses and set a date for a damages trial. Because of the need for case law on the new issues, the case was closely watched by those dealing with the Act. It was not shocking that the servicemember prevailed, but the absolute language of the opinion sent

(Continued on page 26)

(Continued from page 25)

shockwaves to creditors. The Court suggested the argument limiting damages *"would lead to an insane conclusion."* In dealing with argument that a guarantor was not a party in interest was *"simply ludicrous."* Carving out those secondarily liable *"would allow the lender to skirt the protections afforded by the SSCRA."* In describing the bank's suggestions, the court noted it as *"an effort to spin silk from a sow's ear."* The bank faced a damages trial with the published opinion that *"the bank's failure to understand this is the reason for this litigation."*

The bad publicity to the bank, costs of litigation, and undisclosed settlement created a tremendous liability for the creditor. The joint press release best explains the damage control undertaken by the large bank that inherited the litigation:

*"…(e)ven though we had no direct responsibility for the disputed actions…(bank) is firmly committed to upholding the rights of our soldiers, sailors…"*

While much of the opinion was later codified, Cathey should remain an important lesson as to the risk involved in interpreting the Act.

## SCRA of 2003

When the mass mobilizations for the GWOT and Iraq began, existing military debtor and court problems escalated. The SSCRA of 1940 was soon replaced by the Servicemember Civil Relief Act (SCRA) of 2003. In addition to courts of law, administrative hearings were included in protections of the Act. The SCRA of 2003 was a comprehensive revision of the SSCRA of 1940, a codification of the Cathey opinion, a clarification of many gray areas, and included new protections for the servicemember.

## Interest

The old provision reducing the credit interest rate to 6 percent remained. It clarified that the excess interest was forgiven and mandated that the periodic payment must be reduced accordingly. The only notice the soldier had to provide was a copy of military orders, and the effective date of reduction was tied to the date on the orders. The SCRA further defined interest to include service charges or fees added by the creditor to recover losses. These provisions defeated emerging creditor habits of reducing interest but increasing principal payments, demanding excessive paperwork, delaying effective dates, deferring lost interest, and adding fees or service charges.

## Stays

The second major revision involved court stays. Under the old Act, the court could make a timely determination to deny continuances. However, the SCRA of 2003 provides an automatic 90-day stay and requires appointed counsel if further continuance is denied after the 90-days. The initial stay is automatic upon request of the applicable military defendant, but the Court can make such a determination of its own accord without motion. Previously, there was concern that a notice from counsel was considered an appearance, obviating the provisions of "default." This ambiguity was clarified in that such notice was not in fact an appearance, and that for these purses the servicemembers' commanding officer could notify the court without it being the unauthorized practice of law. As an officer of the court, any attorney would have an ethical obligation to advise the court that the defendant is in military service, at which point the Court is likely to grant a continuance out of caution and to preclude reopening any judgment later. It is significant to note that the stage of litigation is immaterial to the issue of a continuance In many cases, the burden of denying the request is so high as to make refusing a continuance impractical.

## Default

Default provisions under the SCRA of 2003 are an additional revision. The old Act required an affidavit with the default pleadings affirming that the soldier was not in military service, but this requirement provided no penalties

(Continued on page 27)

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for non-compliance. The SCRA of 2003 mandates the affidavit as to military service, but provides a criminal penalty for making or using a false affidavit. The act provides that the court may not enter a default judgment to applicable servicemembers until after the court appoints an attorney to represent the defendant. If it cannot be determined whether the defendant is in the military service, the court may require the posting of a bond to protect the defendant. If a default is entered against an applicable military defendant, the defendant may apply for vacating or setting aside the default up to 60 days after the end of the applicable military service; the court "shall" reopen the judgment upon application. Clearly, the provisions for default on an applicable servicemember have changed dramatically over the prior Act.

## Leases

In an adaptation to the modern world, auto and equipment leases are specifically addressed in the SCRA of 2003, where the old Act was silent on the issue. The old Act limited the lease issue to residential leases, but expanded that provision to motor vehicle leases and premises for professional, business, or agricultural purposes. Basically, the old provision for residential leases now incorporates the other types of commercial leases. A separate subparagraph of the Act deals with vehicle leases. The vehicle lease also incorporates a servicemember being reassigned (more than 180 days) outside the continental United States being able to break the lease. There is no specified rule for automobile leases in dealing with mileage or wear and tear issues, so it may be significant in the contract when referring to mileage for penalties being monthly versus the term of the contract period, or a new need for prorating mileage in the event a contract is unfulfilled.

## Extension to other parties

In part a codification of Cathey, but also a new expansion of protection, the SCRA of 2003 increased the protection to dependents, those secondarily liable, and for those serving in allied forces. Guarantors, co-signors, and others secondarily liable have windfall protection. Additionally, a non-servicemember dependant may apply to a court for protection based upon the impact of the mobilization, even where the servicemember is not a party in action to the contract. Even those serving in allied forces have the protection under the 2003 act.

## Statute of Limitations

The statute of limitations was tolled under the old Act. However in an ironic twist, some creditors expanded the limitation in order to still bring a case against the servicemember. In the SCRA of 2003, the statute of limitations is only tolled for the benefit of the servicemember, not against him.

## Other

Other provisions of the SCRA of 2003 include landlord tenant issues beyond residential leases, and now may include commercial leases. Redemption of property is specifically tolled, so replevin actions are delayed regardless of how far along in the process the action may be. Another criminal sanction exists for a person knowingly resuming possession of property in violation of the Act.

## Future Transactions

As a final note on the federal law, it is unlawful to take adverse action towards a servicemember for exercising one's rights under the Act. This includes future denial or refusal of credit because of the individual's membership as a servicemember. Adverse credit reporting, changes of conditions in the contract, and other protections make the servicemember a new class of persons protected from discrimination.

## State Law

It is very easy to rely solely on federal law because of the broad application on creditor issues. However, state law should not be ignored. Some new acts, as well as forgotten statues, may expand servicemember protection. Georgia provides absolute protection beyond the SCRA of 2003:

*"It shall be the duty if any judge of the courts of this state to*

(Continued on page 28)

(Continued from page 27)

*continue any case in the court on or without motion when any party thereto or his leading attorney is absent from court when the case is reached by reason of his attendance on active duty as a member of the National Guard." Georgia Code of Laws §17-1-31 and 9-10-153. (emphasis added)*

South Carolina provides a criminal sanction for pecuniary injury on account of membership in the National Guard. It provides.

*"A person who, either by himself or with another, (a) willfully deprives a member of the National Guard of South Carolina of his employment, (b) prevents such member from being employed, (c) obstructs or annoys a member or his employer in his trade, business or employment because he is such a member or (d) dissuades or attempts to dissuade any person from enlisting in such National Guard by threat of injury to him in his employment, trade or business shall be guilty of a misdemeanor and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail not more than thirty days." S.C. Code of Law §25-1-2190. (Emphasis added)*

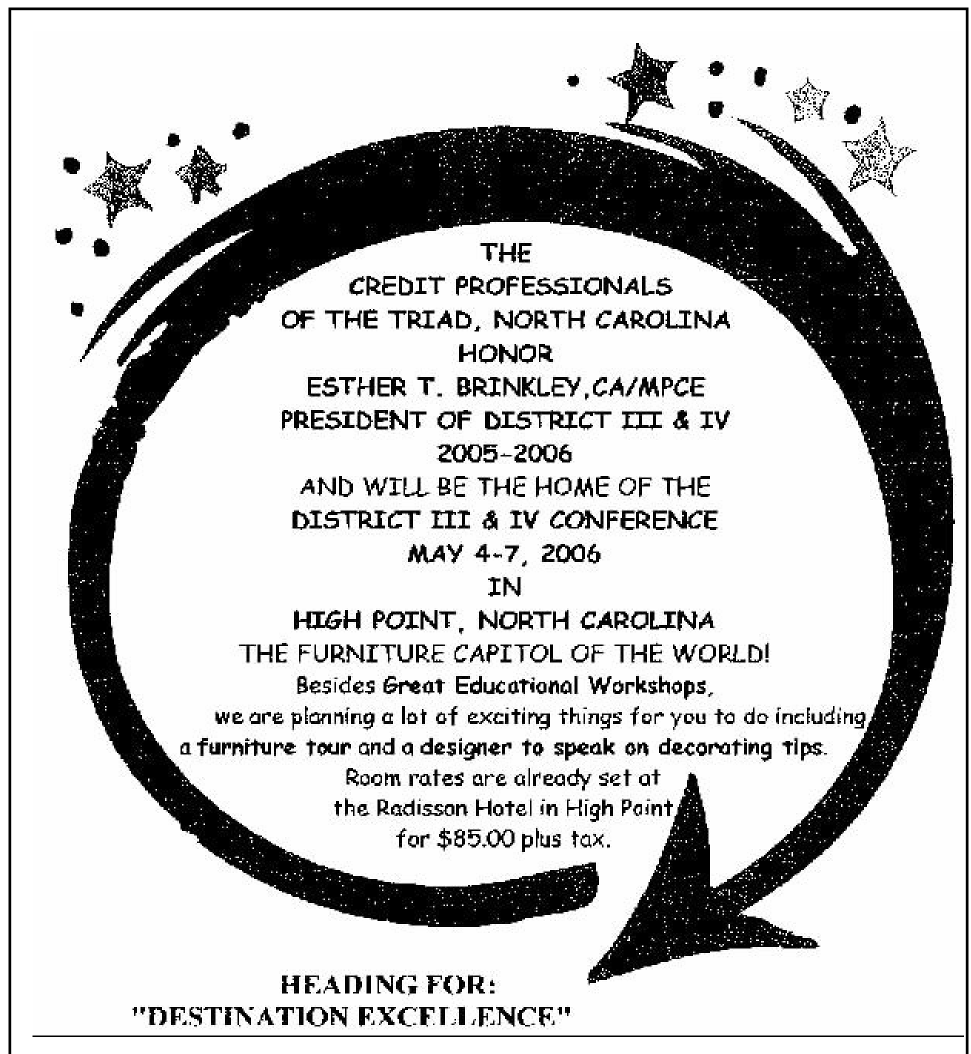
Though likely an employment protection, such a provision is very bothersome for commercial litigation, particularly in light of Cathey. Clearly, state law should be reviewed prior to litigation involving a deployed service-member involved.

## Summary

The events of September 11, 2001, have directly impacted creditor-debtor relations. There is no known end date to the GWOT, with clear notice by the President of a long-term commitment. Even the smallest communities, courts, and creditors will feel this strain. When an issue arises for a reservist or guardsman, attorneys and creditors should review these protections. Creditors and attorney's unfamiliar with the nuances of the law as it pertains to reservists, guardsmen, and their dependents do so at an incredible risk.

*Brigadier General Harry B. Burchstead is the commander of the 263rd Army Air and Missile Defense Command. Lieutenant Colonel Barry Bernstein is general counsel for the South Carolina National Guard. Both are members of the South Carolina Bar.*

*To learn more about the Commercial Law League of America, visit their website at www.clla.org*



# 5 Simple Strategies For Unifying Your Project Teams

by Lonnie Pacelli

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Do your project team members show confusion about who is responsible for what aspects of the job? Do their conversations and meetings usually end in heated personal attacks? Or do individual members ever exhibit an "every person for themselves" attitude and refuse to help their teammates? If you answered "yes" to any of these questions, then you're not alone. Sometimes, a team simply doesn't "gel."

Every experienced project manager has certainly experienced challenges in getting their teams to behave like…well, teams. But with organization and guidance you can help your project teams accomplish more and eliminate many of the setbacks and challenges that make teamwork so difficult. Consider the following five strategies for unifying and organizing your teams:

**One: Establish a Project Organization with Clearly Defined Roles**

Project organization must go beyond a hierarchy chart. Each person needs to know what function they play on the team, how they fit into the other functions, and what happens if they don't do their job.

Depending on your industry or functional discipline, you may employ standard or customary roles on your project team. Start with these standard roles that are typical for your type of projects. But if the particular project need warrants a special role that is outside the standard, then create a special role. And if the project doesn't need a particular standard role, then eliminate it. This may sound easy enough, but many project managers hesitate to deviate from standard roles. At the end of the day, however, results are what matter the most, not how well a team adhered to the standard project role structure.

**Two: Eliminate Finger Pointing and Public Fights**

Every team project will likely involve lively discussions. Often, these discussions lead you one step closer to project completion. But when they get out of control, these discussions lead to finger pointing and fighting. Be deliberate in letting these discussions take place and in letting team members question each other, but put a few rules in place to maintain a level of civility.

Allow team members to challenge and stretch, but when a decision is made, everyone must stand behind it as a team. What happens in the room stays in the room; outside of the room the team remains unified. This means no gossiping or bad-mouthing a team member to outsiders. Also, wrong decisions must be accepted as a team. In other words, no finger pointing allowed. And finally, don't allow problems to become personal. Focus on problems, not on people.

Inevitably some rules will be broken. However, you should still strive to get some ground rules in place to avoid team strife whenever possible.

**Three: Develop a "Rallying Cry" to Focus the Team**

You can look at any major successful campaign and see the

*(Continued on page 30)*

(Continued from page 29)

messages that embody them. Consider these classic examples: "Where's the beef?" "Got milk?" and "Plop, plop, fizz, fizz." All these unifying messages can be associated with a product. Similarly, when driving a project it helps the team to embody some kind of rallying cry or mantra.

Your team's message should incorporate aspects of the project. For example, say your team needs to be cautious not to over-design a solution to keep costs down. In this case, you might start using a "good enough" rallying cry during the design phase to serve as a continual reminder not to overdo the solution. Aside from helping to keep the project within bounds, the rallying cry will also help unify the team.

**Four: Hold Team Members Accountable for Delivery**

With team projects, each member needs to clearly understand what they need to do, when they need to have it done, and how their work fits into the big picture. Everyone needs to realize that the team isn't only accountable to the project manager, but they are also accountable to each other. After all, if one person fails, the whole team fails. Therefore, each individual team member must know what everyone else is doing.

Each role should be aware of what is happening in other roles to ensure that they know if and how they fit in to those aspects of the project. Each role should also realize that if they fail to meet a deadline or don't perform their job adequately, they are letting down the team as a whole, not just the project manager. Meeting or missing deadlines and deliverables are a team issue and should be exposed to the entire team. The point here is accountability. Each member needs to feel accountable for his or her work and needs to experience the joy of success as well as the discomfort of failure.

**Five: Celebrate Victories as a Team**

Driving through a project is tough work, and people can easily get discouraged when the team faces roadblocks or setbacks. Therefore, celebration of key milestones is important to keep morale up and momentum going. These celebrations don't have to be extravagant; they can be as simple as ordering a pizza or bringing in a cake. Anything that allows the team members to let their hair down and take a bit of a breather will suffice. However, too much celebration can lessen the impact of the success and may actually annoy the team members. So celebrate, but do it in moderation.

## Teamwork in the Future

A well-structured project team means each team member understands his or her role in making the project successful. Project team members know what they need to contribute to the project, when they have to perform, what other project team members are doing on the project, and what it takes to be successful. Just as important, each of the team members helps each other to ensure overall project success. When you use these five strategies to unify and organize your teams, you can overcome the common teamwork challenges and make all your future projects more successful.

*Lonnie Pacelli is the author of **The Project Management Advisor** (www.projectmanagementadvisor.com/). He has over 20 years experience in projects as a project manager, developer, tester, analyst, trainer, consultant, and business owner. He has successfully implemented projects ranging from complex IT systems to process re-engineering to business strategies. His company is Leading on the Edge International (www.leadingonedge.com).*

*He is also a co-owner of delBistro (www.delbistro.com), a prepared entrees deliver-to-your-door-service. His experience as a consultant, project manager, and business owner give him a unique perspective into managing successful projects.*

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# Encourage Employees To Open Up and Give Feedback

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Feedback is essential to successful leadership. You can't gauge how people feel if you don't get their honest—sometimes brutal—feedback. *Use these tactics to encourage employees to open up:*

## Remain Available

Get out from behind your desk and circulate, particularly first thing in the morning. By getting out and about, you show staffers that you value openness. Make a habit of regularly eating lunch with co-workers and leaders of other departments. Get to know the administrative assistants as well as the professional staff. Use e-mail and instant messaging, but only in addition to face-to-face time. *Here are more ways to remain available:*

**Listen.** To make a real impact on the attitude of others, simply listen. It shows you're interested in their ideas and opinions. That, in turn, raises their spirit and morale. They will feel they're making a valued contribution—especially when the employee may be thinking "I'm just a secretary, assistant, etc." Listening can elevate their confidence. A confident employee will work harder and feel better about the workplace, spreading a positive attitude to co-workers and customers. When listening, concentrate on the speaker's message and resist distractions. Indicate you understand by saying things such as "Let me be sure I understand you correctly. You're saying…"or "Tell me more about your concern" or "I'm interested in what you've just said. Can you share a little bit about what led you to that conclusion?"

**Publicize your "open" hours.** Be clear with employees about your availability. If you have "closed-door" hours, for example, let employees know when you are free. Knock down any barriers that keep employees from talking to you directly. Even at a large company such as American Express—with more than 40,000 employees—non-management staffers feel they can call the CEO, if they need to. The CEO "would take the call or call me back," says one employee.

**Invite participation.** Start a "graffiti wall" where employees and leaders can exchange thoughts. Everyone benefits from seeing different perspectives on the same issues. And it's a creative way to allow for top-down/ bottom-up information flow.

**Identify the informal opinion leaders in your organization.** Seek them out often and listen closely to what they tell you. You can't create a better office environment if you don't have an accurate picture of your employees' relationships and attitudes.

## Respond to Ideas

Now that you've got employees opening up and talking to you, make sure you respond quickly to their input to show your respect and interest. They'll feel more connected to the workplace. That raises their level of motivation and commitment—for them and everyone around them. Responding also ensures that employees continue bringing you ideas. It could be a person's third idea that turns out to be a breakthrough, so make sure they bring you that idea. *Here's how some organizations encourage a free flow of good ideas:*

**U.S. Navy Captain Michael Abrashoff** believes that listening aggressively is key to creating a positive workplace. "Soon after arriving at my command, I realized that the young folks on my ship were smart and talented. My job was to pick up all of the ideas that they had for improving how we operate." By asking for and responding to their ideas, he turned a group of unmotivated, demoralized people into a group

*(Continued on page 32)*

(Continued from page 31)

so positive they served as a model for the entire Navy.

**At Southwest Airlines** "The rule…is if you get an idea, you read it quickly and respond instantaneously," says company founder Herb Kelleher. "You may say no, but you give a lot of reasons why you're saying no, and you may say we're going to experiment with it in the field, see if it works. But I think showing respect for people's ideas is very, very important because as soon as you stop doing that you stop getting ideas." They don't use a suggestion box. "You ought to be with your people enough that they are comfortable to just pop on in and give you their ideas."

**At International Data Group in Boston,** publisher of computer magazines and "Dummies" books, managers ask for employee suggestions, then carry them out. For one office, that meant putting in an arcade; for another, it meant letting staffers conduct hiring interviews.

## Prove to them that you want candor.

Candor is important if you want to keep a positive workplace from turning sour. When you don't hear dissenting and contrasting viewpoints, you cut yourself off from your best chance to detect and correct problems as they arise. Stifling dissent only drives it underground, so make candor a part of your office culture. *Use these strategies to bring problems to the surface:*

**Prompt honesty by asking the right questions.** When asking for feedback from employees, don't pose leading questions that result in dishonest answers. For example, replace "You agree with my proposal, don't you?" with "What are your thoughts about my proposal?" And make a point of occasionally asking "How am I doing?"

**If employees are reluctant to be honest,** ask the question this way: "What's one thing I could have done on that project that would have made your efforts even more successful?"

**Reward those who offer you the truth**—even when it's a bitter truth. *Example:* "Jack, it took guts for you to tell me you lost a major client. But I had to know. I appreciate that." Thank your staffers for delivering bad news to you. *Remember:* Before they told you, the problem still existed, but you were helpless to deal with it.

**Hold a gripe session.** If there's a group of negative employees, provide a forum for them to vent frustrations and reveal the scope of the problem to you. Convene 10 to 15 people. Ask clear questions to uncover their concerns, telling them their input will be seen as positive, as long as they try to improve the situation. Post input on a flip chart, and ask the group to vote on items that are most troubling, so you know where to focus. Say nothing during the session; only pose clarifying questions. Then issue a promise. Say "I'll be in this room next Monday with a response to the issues you've raise." When you meet again, acknowledge their points, clear up any misunderstandings, identify issues that warrant attention and ask the group to search for solutions, where possible. If an issue is beyond your control, say so.

## Prepare for criticism from employees

Ask yourself "Can I handle negative comments calmly and objectively?" If not, then don't ask. The worst thing you ca do is ask for opinions then argue with staffers about what they tell you. Realize that their frankness can uncover your blind spots. *Here are some tips to help you take criticism:*

**Set the example for receiving criticism** by showing that you heard the criticism—by nodding, for example. Then pose a clarifying question: "Do I understand you to mean that…" If you accept the criticism, say so. Show you can absorb the blow gracefully. *Example:* If they say "There's something wrong here," reply "You're right What would you do to improve it?"

**Don't argue with emotional, hostile critics.** Arguing only makes things worse. They won't listen to reason. When they calm down, discuss the problem.

**Don't reward petty or snide remarks** with a thoughtful response. Simply say "Thanks for the feedback" and move on.

# Bank of America's New Debit/Savings Program Prompts Scrutiny

By Missy Baxter

Originally published at www.AtmMarketplace.com
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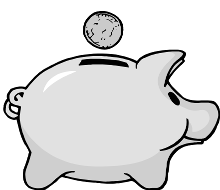
Bank of America, the nation's largest debit card issuer, has devised a new approach to allow customers to save spare change when they use their debit cards. Yet, one of the country's leading consumer advocacy groups says the program is designed to boost interchange fees collected from merchants.

The Keep the Change program, launched in September at more than 5,800 Bank of America branches, allows customers to round-up debit purchases by putting change into savings accounts. Bank of America's patent-pending program, touted as an "electronic piggy bank," is the first free savings feature tied to a debit card, bank representatives say.



Those reps add that Keep the Change was designed to encourage customers to save more money during a time when the personal savings rate is low—less than 1 percent, according to the U.S. Department of Commerce's Bureau of Economic Analysis.

But Ed Mierzwinski, consumer program director for Washington, D.C.-based U.S. Public Interest Research Group, said Bank of America's new initiative is "a blatant attempt to collect more interchange fees" by boosting usage of more than 27 million BofA debit cards issued in the United States.

"I'm not at all impressed with Keep the Change," Mierzwinski said. "I believe this is part of Bank of America's strategy to encourage people to use their debit cards more often so that the bank can increase its profits by collecting more interchange fees from merchants. I think the amount they are tossing at consumers is peanuts compared to the increase they will see in interchange fees if this program is successful. The bottom line is they are trying to increase the use of debit cards to increase their profits."

By charging merchants a point-of-sale fee, typically between 1 percent and 2 percent, on debit card purchases, Mierzwinski said, Bank of America "stands to make a sizable profit" if the new program prompts consumers to use their debit cards more often.

He also said the program is designed to encourage more small purchases with debit cards, which could lead to higher prices for items ordinarily purchased with cash.

"The cost is ultimately going to trickle down to the merchant and then to the consumer in the form of higher prices," Mierzwinski added. "If everyone uses plastic to pay for minor purchases, such as a cup of coffee, the merchants will raise the price of their goods to overcome the increased fees."

Bank of America officials, saying the information is proprietary, declined to respond to Mierzswinski's comments. They also refused to divulge how many customers have signed up for the program and whether the program has prompted more debit-card usage.

But according to an Oct. 19 quarterly earnings report, Bank of America's debit-card usage has risen, with purchase volumes soaring 28 percent from last year and revenue increasing 29 percent to $421 million. The report also

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(Continued from page 33)

stated that third-quarter net income rose 10 percent to $4.13 billion from $3.76 billion a year earlier, with a record 635,000 new retail checking accounts and 294,000 new savings accounts.

## What exactly is Keep the Change?

When a customer signs up for Keep the Change, the amount of every purchase that customer makes with a Bank of America Visa debit card is automatically rounded up to the next whole dollar. At the end of each day, the excess above the actual purchase price is rolled into savings.

As a bonus, Bank of America matches 100 percent of the Keep-the-Change transfers for the first three months after enrollment. After that, the bank contributes a five percent match per year. The maximum match is $250 annually—an amount that is credited to a customer's savings account once a year. And Bank of America has not guaranteed that the matching program will continue indefinitely.

Diane Morais, a Bank of America executive who oversees deposits and debit products, said the Keep the Change program was launched after extensive research. "Our customers told us they want a simple way to save, so we created Keep the Change."

When the bank started its rollout in September, "customer feedback was very strong regarding KTC," said George Owen, a Bank of America spokesman. The bank's incentive to offer this program is multilevel, Owen added, although he declined to cite specifics. "The bank is focused on organic growth and building relationships with its customers."

*Missy Baxter is a freelance writer based in Chapel Hill, NC, and a graduate of the University of Louisville. In her 20-year career as a journalist, she has had more than 5,000 articles published in daily newspapers, magazines and trade publications. Missy also is the daughter of Past International President Nona Ellzey, MPCE, of Jackson, MS. Nona says Missy grew up with Credit Professionals International and has given her two wonderful granddaughters.*


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# How Does the New Banckruptcy Law Affect Small Businesses?

By Michael R. King, Esq.

**QUESTION:**
What is this nonsense about new rules for "small business debtor" bankruptcies under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005?

**ANSWER:**
Theoretically Congress made it easier for small business debtors to emerge quickly from the bankruptcy process after reorganizing, although some are skeptical.

The costs of a Chapter 11 bankruptcy reorganization are often more than a small business debtor can handle. Statistics show that many small business Chapter 11 reorganization proceedings eventually become Chapter 7 liquidation proceedings. Congress wanted to help small business debtors move through the bankruptcy process more swiftly and so it created the concept of the small business debtor.

A small business debtor is defined as a business engaged in commercial or business activities with non-insider, non-affiliate, non-contingent debts of no more than $2 million. If a creditors' committee is appointed which is sufficiently active to be effective, then the case will not be a small business debtor case. So, if you do not want the case to be a small business debtor reorganization, organize an active creditors' committee.

One of the ways Congress hopes to streamline the reorganization process for small businesses is in the treatment of disclosure statements and reorganization plans. Now, when the Bankruptcy Court considers the disclosure statement filed by the debtor, it must think about the complexity of the case, the benefit (or lack of benefit) of additional information to creditors and other parties in interest, and the costs associated with providing additional information. Thus, the Bankruptcy Court can even eliminate the requirement of a disclosure statement in cases where: (1) the debtor is a small business and: (2) the debtor's plan provides sufficient information without the need for a disclosure statement. There will also be standard forms for disclosure statements which will be available under bankruptcy rules to be adopted.

The standard form disclosure statement and plan of reorganization for small business debtors is intended to supply all parties with appropriate information and to simplify the process and save money. We will see.

Despite the intent of Congress to make it quicker and easier for small businesses to reorganize under the Bankruptcy Code, many of the new duties for small business debtors will be burdensome. While the intent seems to be to keep creditors, the U.S. Trustee and the Court informed of the progress of the small business debtor, one wonders about the ability of an already bankrupt small business to comply with the new requirements.

The following is a list of some of the new requirements for small business debtor cases.

(1) The debtor must allow the United States Trustee or its designated representative to inspect the premises, books and records of the business. (One wonders how the U.S. Trustee's office will be able to accomplish this result without additional funding.)

(2) The debtor will be required to file the most recent balance sheet, statement of operations. cash-flow statement and federal income tax return with the Chapter 11 petition, or file a statement that no such information has been prepared or

*(Continued on page 36)*

(Continued from page 35)

filed. (Given the chaotic nature of most small business reorganization filings, the statement under penalty of perjury that no such information is available seems to be the most likely result.)

(3) The small business debtor is required to attend meetings scheduled by the Court or the U.S. Trustee, including the initial meeting of creditors, initial debtor interview and scheduling conferences.

(4) The debtor must timely file all schedules and statements of financial affairs, unless the Court allows an extension of no more than 30 days (extraordinary and compelling circumstances may allow the Court to extend the 30 days).

(5) The small business debtor must file all financial and other reports required by the bankruptcy rules or local bankruptcy rules after the filing of the petition.

(6) The debtor must file its tax returns and other required government filings on time.

(7) The debtor must pay all taxes, except those being contested, on time.

(8) The debtor must maintain appropriate insurance.

Frankly, most of these requirements were already matters frequently raised either by creditors or by bankruptcy trustees. For example, the failure of a debtor to provide adequate insurance almost always results in immediate action by the Court to lift the automatic stay or provide other similar relief for aggrieved creditors.

While the intent of Congress was to streamline the small business debtor reorganization bankruptcy and to also provide more information to creditors, one wonders whether either of these objectives will be actually accomplished. The flexibility to combine the disclosure statement and plan of reorganization hearings will be helpful. On the other hand, while requiring more disclosure and information from the debtor may be good for creditors, let's face the fact that we are dealing with small business debtors who do not have the best business practices. If these companies were paragons of good management, we would not be dealing with small business debtor Chapter 11 reorganizations. To expect that simply requiring additional reporting will improve the process may be naive.

Nevertheless, if you need additional information concerning the impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, please feel free to call me.

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# How To Communicate During Times of Great Change

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Change is disorienting, frightening and inconvenient. But it's part of your job to help employees overcome their fear of change. Oddly enough, it doesn't much matter if the change is for the better or for the worse. The lure of the familiar is so strong that many of your employees will long for the "good old days."

Don't despair. You can help employees learn to accept change, despite their reservations. Start to break down their resistance by first acknowledging the fact that most people resist change. Why? New systems and procedures usually mean employees will have less control—and they may resent giving up what's familiar, comfortable, stable and safe. Others fear the organization isn't changing for the better. Still others can't stand confusion. Or they simply may suffer from "change fatigue"—victims of management's too-frequent improvement efforts.

Here's how you can break the hold of the past without threatening employees' sense of security:

## Identify change resisters.

They're the ones who say "That's not how we used to do things" or "We're just fine the way we are." These are the people most likely to sabotage your efforts to introduce new ideas or procedures.

***Strategy:*** Show resisters that you value them and their skills. If you have the luxury of time, don't try to change everything at once. But make sure they understand that

change is inevitable. Sometimes, you can nurse change resisters along. Other times, you simply have to lay down the law: The game is changing, and they can either play by the new rules or play somewhere else.

## Answer vital questions.

Leaders who want everyone on board with a change campaign need to introduce ideas in a way that promotes acceptance and cooperation. The alternative is to face resistance or outright rejection of change. People want to know the answers to these questions when important change is afoot:

- How will my job be affected?
- What are the specific goals and purpose of the change?
- How will the changes increase or decrease the amount of control I have over my future?
- Will I have to work harder for the same pay?
- Will I need to complete training?
- What are the risks or possible drawbacks of this change to me and to the organization?
- How and why is the change an improvement?
- What happens to me if the change fails?

If you don't answer these questions, you'll never get employees to fully embrace change.

*(Continued on page 38)*

(Continued from page 37)

## Remember that people support what they create.

Involve employees in planning for the change. If they aren't involved in the early stages, they'll never fully support the effort. Appeal to their sense of adventure to rally them around the idea of change and their ability to handle it.

*Example:* "I know we're not the kind of team that backs away from a challenge. We've pulled off plenty of tough assignments in the past."

The best solutions and changes involve—from the very beginning—those who will end up actually doing the work.

You'll spare yourself a lot of hard work and heartache if you include your employees in any decisions you make. When you propose a major change to the way your department operates, share your idea with your employees, especially those on the front line—the people who have direct contract with customers. If they don't buy into your objectives, find out why. Research shows that changes originating at the bottom of the organization are the most likely to succeed.

## Give compelling reasons to change.

Don't assume that your employees will be excited about your proposals—even if the change is in their best interests.

People usually see obstacles before any benefits. Prepare employees for your ideas by creating discontent with the status quo. Do that by explaining trends in your industry and letting people know what will happen if your department fails to change.

***Example:*** "We're getting slammed by online competitors. If we don't figure out a way to increase our Web presence, we'll have to cut staff."

## Emphasize the positive aspects of the change—even if everything seems negative at first.

***Example****:* A workforce reduction could mean more responsibilities—and opportunities—for those who remain. And never cite poor performance as the reason for change. Instead of criticizing, paint an accurate picture of your market challenges, and show employees why change is necessary for survival.

***Example:*** Don't tell employees "If things hadn't become so sloppy around here, we wouldn't need to change." Instead, tell them: "Our competitors can deliver finished products in half the time because of this new technology. If we don't make the change, too, we'll lose all our key accounts."

**Communicate constantly.** Tell employees why, when and how the change will take place. Discard the idea that you can maintain "corporate secrets." During a time of corporate upheaval, one thing is certain: Employees pass information along from person to person—distorting and editorializing along the way—unless you feed the grapevine with accurate information.

## Accept that change occurs incrementally.

Prepare for false starts, plateaus and setbacks. And prepare to help employees break free from the grip of the status quo. Remind them that change often increases long-term stability.

For more helpful information on communications, visit the Briefings Publishing Group website at www.communicationbriefings.com

# MEMBERSHIP NEWS

*The following people have joined CPI since the last magazine was published. We welcome these new members.*

Atlanta, GA
**Christine F. Brown**
Sleep Med Therapy Service
**Konny Light**
Business Quickening
**Thomas E. Newell**
Newell Financial Services Group
**Mary L. Rangel-Mattox**
1st Choice Credit Union
**Barbara E. Waters, MPCE**
Southern Living at Home

*Augusta, GA*
**Mitia Key**

Lake Charles, LA
**Cindy Nix**
The Clinic

Cabarrus County, NC
**Sue Kemp**

CPI of the Triad, NC
**Mona Hawks**
**Linda Seawell**
Piedmont Natural Gas

Eastern NC
**Marvin Robbins**

Jackson, TN
**Patricia Fason**
Jackson Mad. Co. General Hospital
**Angela M. Kail**
AmSouth Bank
**Jackie Marshall**
Union Planters Bank
**Billy W. Minor**
M&M, Inc.
**Dawn T. Morgan**
First South Bank
**Jennifer J. Nipp**
Postal Employees Credit Union

Iliana
(Illinois/Indiana)
**Fannie Brooks, PCS**

Indianapolis, IN
**Clarence Bolden**
**Bruce Curry**
Indianapolis Neighborhood Housing Project
**Wilma Rettig**

Ann Arbor, MI
**Sue Augustine**

Jackson, MI
**Sharon K. Keinath**
Exchange Financial
**Professional Business Bureau**

Sun-Sational, CO
**Tracy Baird**
Vectra Bank Mortgage Group
**Martha J. Garren**
Parkview Medical Center

Las Madrugadoras, NM
**Barbara Anaya**

Lawton, OK
**Jeannie Davis**
IBC Bank
**Lollie Sparkman**
**Irene Tyler**
IBC Bank
**Beverly Wooley**

Anchorage, AK
**David Braun**
Northrim Bank
**Deb Marquart**
ACS

Pocatello, ID
**Tierra Bridges**
**MariLynn Halling**
**Barbara Larsen**
**Randi Swanson**
SEI-US Employees FCU

Flathead Valley, MT
**Sherry Mahugh**
Three Rivers Bank of Montana
**Megan Keltner**
Consumer Credit Counseling Service of MT
**Carolyn Wells**
Wells Fargo Home Mortgage

Great Falls, MT
**Tamara Bennett, PCE**
Credit Associates

Pendleton, OR
**Dian Payant**
Pendleton Internal Medicine

Direct Members
**Ronald Johnson**
Ready Mix Concrete
Raleigh, NC

# Certification News

**The following people have received professional certification since the last issue of The Credit Professional.**

**Master Professional Credit Executive (MPCE)**

**Catharine Chiari**
Norfolk, VA

**Darlene Eason**
Charlotte, NC

**Mitia H.Key**
Augusta, GA

**Judy Lilly**
Charlotte, NC

**Michele Rocher**
Atlanta, GA

**Marlene Wilcox**
Anchorage, AK

**Professional Credit Executive (PCE)**

**Amelia Brown**
Atlanta, GA

**Kevin Butts**
Southfield, MI

**Diane Radcliff**
Charlotte, NC

**Professional Credit Specialist (PCS)**

**Ana M. Barrientos**
Laredo, TX

**Sheila Butts**
Southfield, MI

**Frances Crowell**
Augusta, GA

**Perla E. Ruiz**
Laredo, TX

**The following people have received recertification or upgrades**

**Esther Brinkley, MPCE**
Winston-Salem, NC

**Bonnie Burns, MPCE**
Jackson, MS

**Barbara Chapin, MPCE**
Jackson, MI

**Corine Jones, MPCE**
Savannah, GA

**Brenda Lawson, PCS**
Hutchinson, KS

**Rhonda McKinney, MPCE**
Atlanta, GA

**Carol Neal, MPCE**
Atlanta, GA

**Elizabeth Parsons, MPCE**
Norfolk, VA

**Barbara Waters, MPCE**
Atlanta, GA