



## UCC Remedies Upon Debtor's Default

For Webinar Technical Assistance,  
please call NCS at 800-826-5256.  
Our presentation will begin shortly.



# Agenda

- Collateral descriptions
- Secured creditor status
- Blanket filings
- Purchase Money Security Interest
- Security agreements
- Repossession
- Collection and enforcement
- Disposition of tangible and intangible collateral

# Creating A Reason

## Our rights upon our debtor's default are largely determined by:

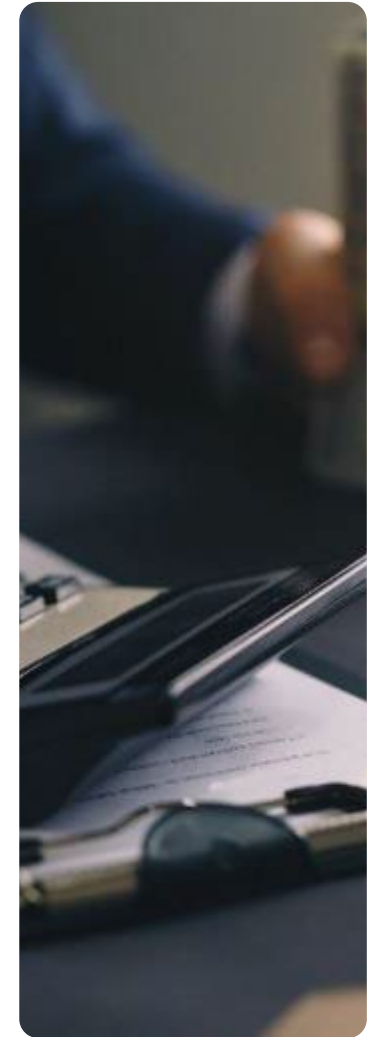
- Our security agreement. (What rights have we given ourselves?)
- Our collateral description. (What assets have we had pledged against our debt?)
- How we have filed our UCC. (Have we given ourselves priority in our goods?)



# Evolution



**1** of the **10** of the **15...**



# Creating A Reason

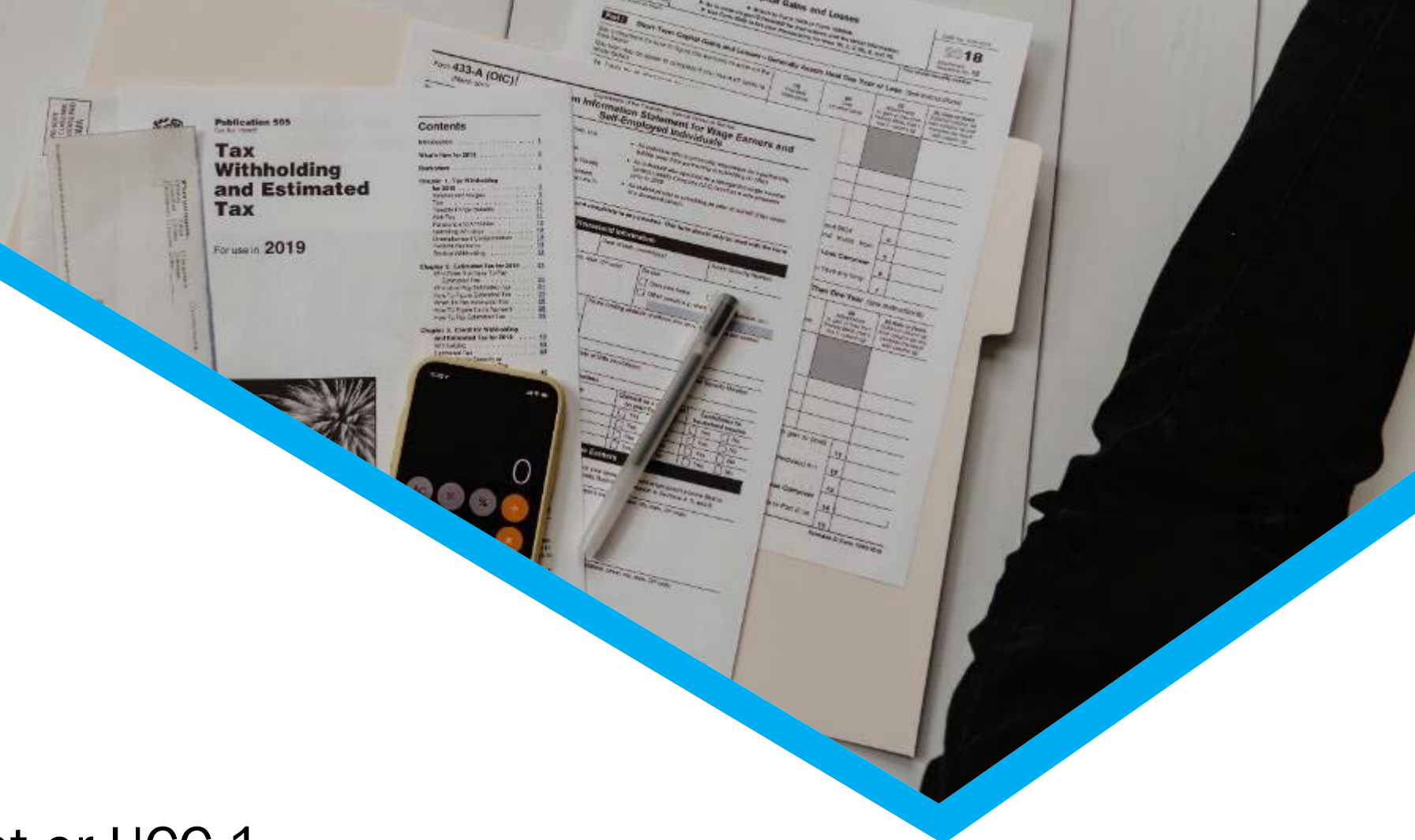
- Declare the debtor in default of the terms of their security agreement
- Advise them they must cease and desist selling the inventory or using the equipment
- Set a cure period
- Inform debtor if payment isn't made by the cure period secured party will begin repossession proceedings
- Set a date and time for repossession
- Depending on what the security agreement calls out, advise the debtor they must assemble the inventory and have it conveniently available for pickup
- Inform debtor the next step is to send a notice of disposition of collateral to all other secured parties, which may include the bank





# Two Required Elements

1. Security Agreement
2. Financing Statement or UCC-1



# Security Agreement

- Creates the secured interest
- Spells out terms and conditions

## **SECURITY AGREEMENT**

This Security Agreement made and entered in this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between **SECURED PARTY NAME**, located at **SECURED PARTY ADDRESS**, (hereinafter "Secured Party") and **DEBTOR NAME**, with chief executive offices located at **DEBTOR ADDRESS**, and if registered, incorporated in the state of \_\_\_\_\_ (hereinafter "Debtor").

### **I CREATION OF SECURITY INTEREST**

In consideration for the extension of credit, Debtor hereby grants a security interest in and assigns to the Secured Party the Collateral described in paragraph II below to secure payment and performance of all debts, liabilities and obligations of Debtor of any kind whenever and however incurred to Secured Party.

### **II COLLATERAL**

To secure payment for all purchases from Secured Party, now and in the future, Debtor hereby grants Secured Party a continuing security interest in all of Debtor's presently owned or hereafter acquired (a) goods, (b) instruments, (c) promissory notes (d) Chattel paper including electronic chattel paper and tangible chattel paper, (e) documents, (f) books and records, (g) accounts, (h) accounts receivable, (i) equipment, (j) inventory, (k) commercial tort claims (l) general intangibles, (m) payment intangibles and (n) software, together with all proceeds and all support obligations thereof. Secured Party's security interest is explicitly limited to outstanding obligations between Secured Party and Debtor.

The term "Obligations" as used in this Agreement shall mean and include all indebtedness, liabilities and obligations, liabilities and obligations of any nature, however arising whether monetary or otherwise, now existing or hereafter arising in favor of Secured Party, including any attorney's fees and expenses to which Secured Party may be entitled as further provided in this Agreement.

### **III DEBTOR'S OBLIGATIONS**

- A. Debtor warrants and covenants: That the Collateral will be held for use, sale or lease in and for Debtor's business and will be kept only at the principal place of business set forth herein (and Debtor's additional address(es) set forth with its signature, if any); Debtor will notify Secured Party in writing five (5) days prior to any of the following:
- (1) Change(s) or additions to location of any material or substantial portion of the Collateral,
  - (2) Change(s) in location of chief executive offices (if an unregistered entity),
  - (3) Change(s) in state of incorporation (if a registered entity),
  - (4) Change(s) in state of residence (if an individual),
  - (5) Change(s) in name of Debtor's business.
- B. Debtor will notify Secured Party in writing 30 days prior of: its opening of any new places of business, or the closing of any existing places of business, or the change of name or nature of the entity including changes to state of incorporation or state of chief executive offices.

### **IV DEFAULT**

The following shall constitute a default by Debtor:

- ~~non-payment:~~ Failure to pay the principal or any installment of principal or of interest on the indebtedness or any notes when due. In addition, Debtor shall be in default if bankruptcy or insolvency proceedings are instituted by or against the Debtor or if Debtor makes any assignment for the benefit of creditors.
- ~~misrepresentation:~~ Misrepresentation or misstatement in connection with, noncompliance with or

# Security Agreement

Can be a stand-alone document or exist in other forms

- Loan agreement
- Sales agreement
- Consignment agreement
- Promissory note
- Conditional sales contract
- Dealer agreement
- Or....

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~~misrepresentation:~~ Misrepresentation or misstatement in connection with, noncompliance with or





# Security Agreement

## Must include:

- Identity of the debtor
- Identity of the secured lender
- A “granting clause”
- A collateral description
- Signature (if paper)



# Security Agreement

## SHOULD include:

- Description of default
- Repossession plan
- Disclosure of corporate structure and name
- Requirement for future disclosure
- After-acquired property clause
- Authorization statement
- Requirement for insurance (fire, flood, etc.)



# Property Covered by Article 9

## Tangible Personal Property

### Goods

- Inventory
- Consumer goods
- Farm products
- Equipment
- Fixtures

## Other Rights

- Investment property
- Documents
- Money

## Intangible Property Rights

### Payment rights

- Accounts
- Health insurance receivables
- Chattel paper

### Instruments

- Promissory notes
- Commercial tort claims
- Deposit accounts
- Letter of credit rights

### • General intangibles

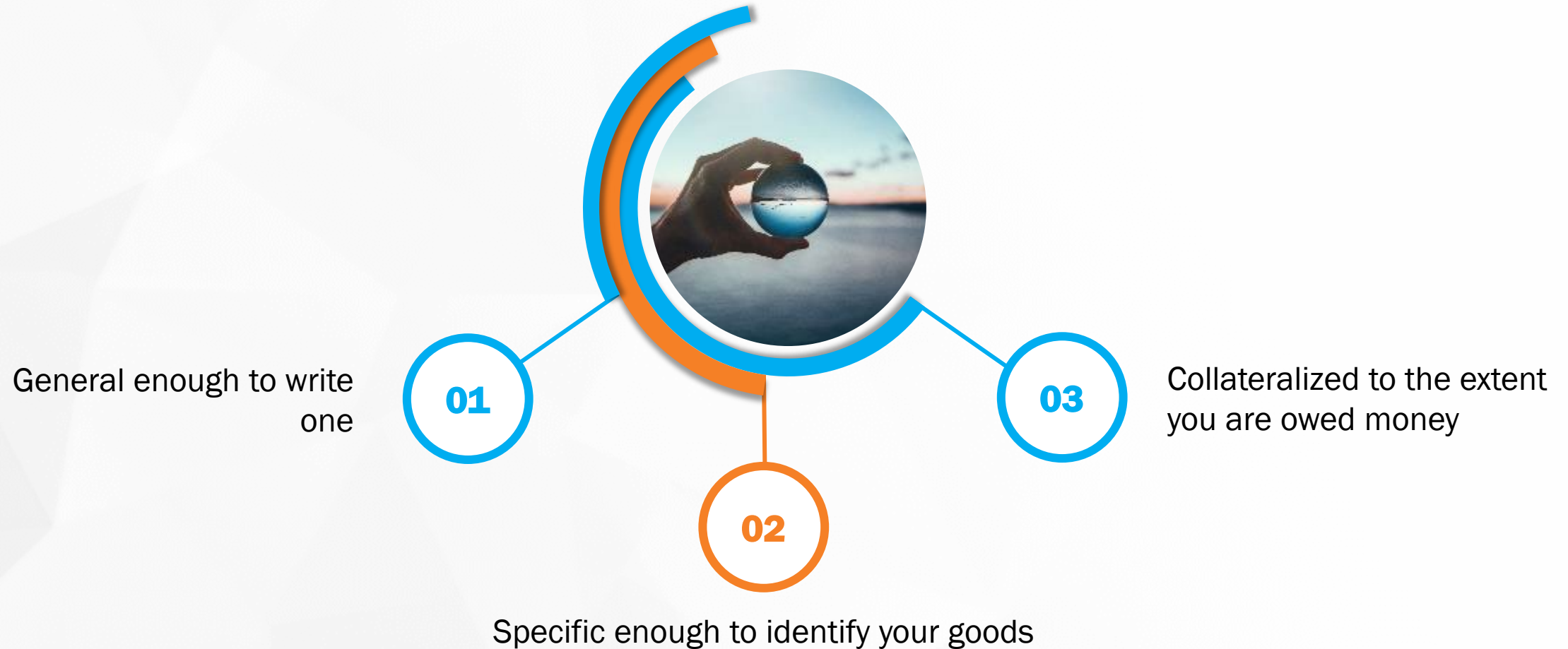
- Payment intangibles
- Software

# Collateral

Collateral is property pledged as a guarantee of payment for an obligation or a loan.



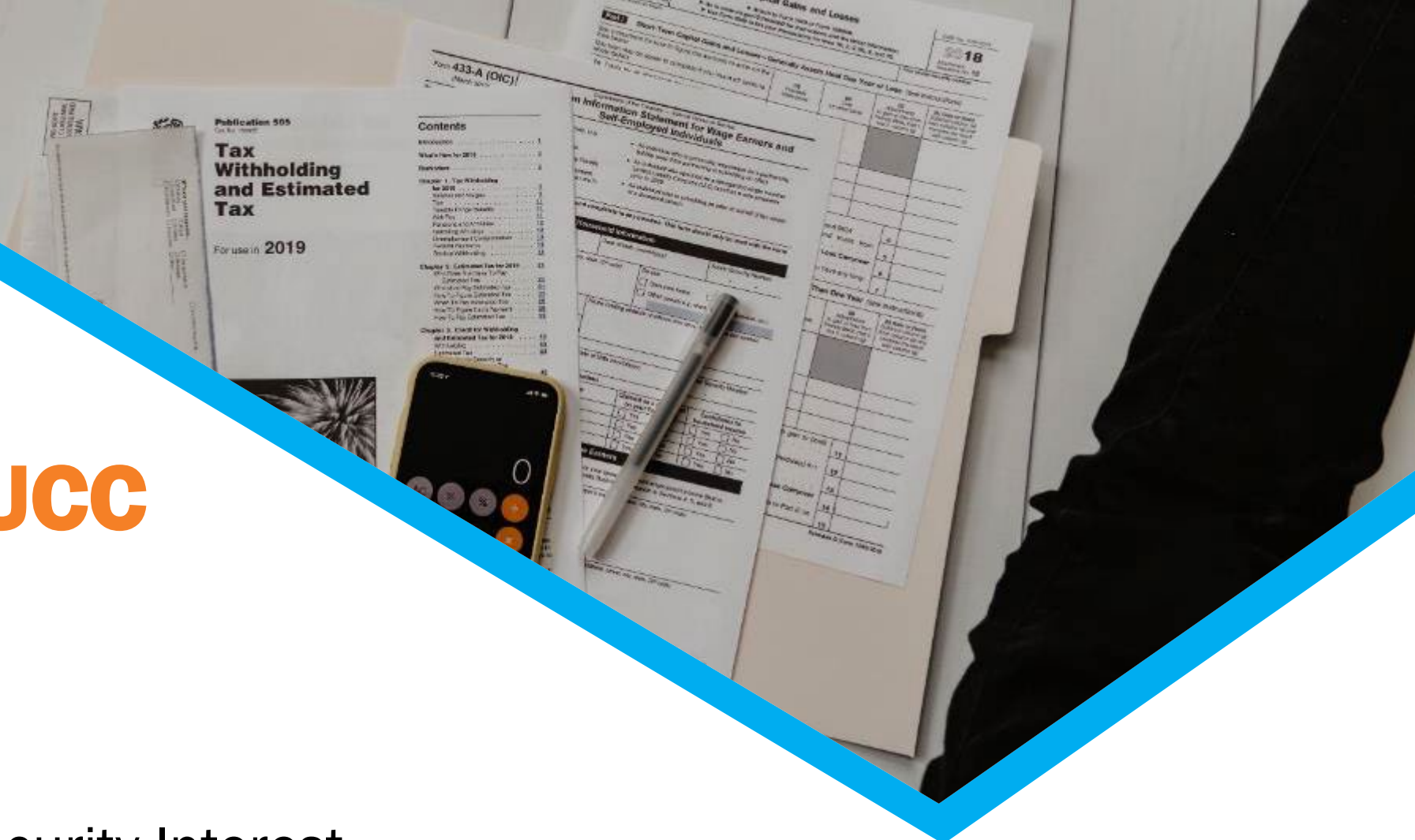
# Three Goals of a Collateral Description





# Two Types of UCC Filings

1. Blanket, or Basic
2. Purchase Money Security Interest







# Blanket, or Basic, UCC-1 Filing

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## Two Characteristics:

01

The filing covers all  
assets

02

The priority stacks

# Collateral: Blankets

To secure payment for all purchases from Secured Party, now and in the future, Debtor hereby grants Secured Party a continuing security interest in all of Debtor's presently owned or hereafter acquired

- Goods
- Instruments
- Promissory notes
- Chattel paper including electronic chattel paper and tangible chattel paper
- Documents
- Accounts
- Accounts receivable
- Deposit accounts
- Commercial tort claims
- General intangibles
- Payment intangibles
- Healthcare receivables
- Letter of credit rights
- Software, together with all proceeds and all support obligations thereof.

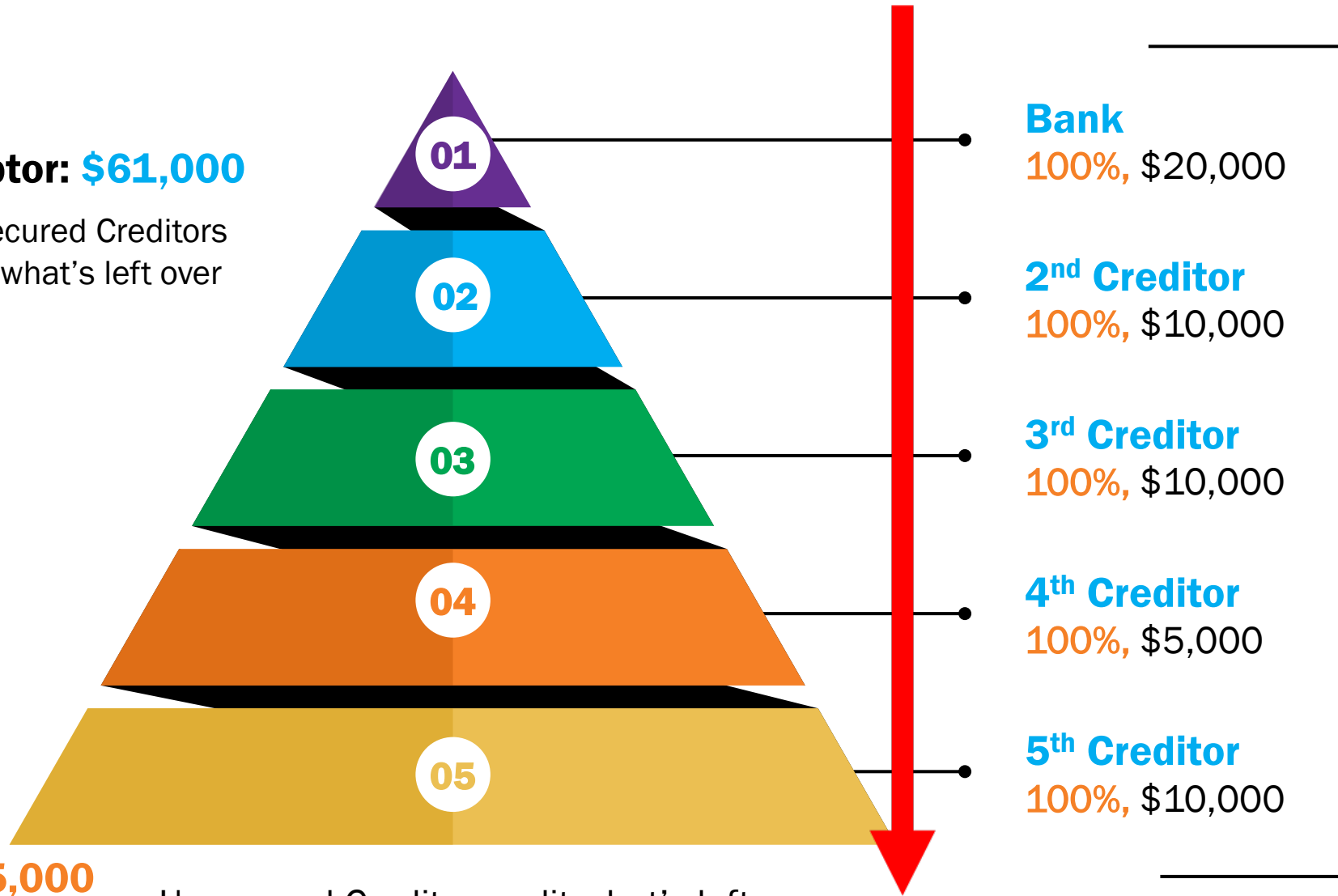


**Debtor: \$61,000**

Unsecured Creditors split what's left over

**\$55,000**

Unsecured Creditors split what's left over



*First in time, first in right*

**Secured Creditors**

# Purchase Money Security Interest

A priority security interest in specific identifiable goods with a secondary non-priority interest in intangibles.

**UCC FINANCING STATEMENT**  
FOLLOW THESE INSTRUCTIONS (Read and RE-READ CAREFULLY)

A. NAME & PHONE OR CONTACT AT FILER (preferred)  
(440) 481-9881 sales@ncscredit.com  
B. SEND ADDRESS AND CREDIT TO: (Name and Address)

NCS Financial Services  
PO Box 24101  
Cleveland, OH 44124

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - use the legal name (S or B) - do not abbreviate or combine names  
a. ORGANIZATION'S NAME  
OR  
b. DEBTOR'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - use only if you do not name (S or B) - do not abbreviate or combine names  
a. ORGANIZATION'S NAME  
OR  
b. DEBTOR'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME or NAME of TOTAL ASSIGNOR of ASSIGNOR(S) - use only if you do not name (S or B)  
a. ORGANIZATION'S NAME  
OR  
b. DEBTOR'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. THE FINANCING STATEMENT covers the following collateral

5. FUTURE ACQUISITION of equipment, inventory, fixtures, goods, documents, instruments, intangibles, and all rights to after-acquired property - use only if you do not name (S or B) - do not abbreviate or combine names  
6. FUTURE ACQUISITION of fixtures, goods, documents, instruments, intangibles, and all rights to after-acquired property - use only if you do not name (S or B) - do not abbreviate or combine names

7. ORIGINAL FILER REFERENCE DATA

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 8/2016)

# Purchase Money Security Interest

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## Two Characteristics:

01

Creditor finances goods

02

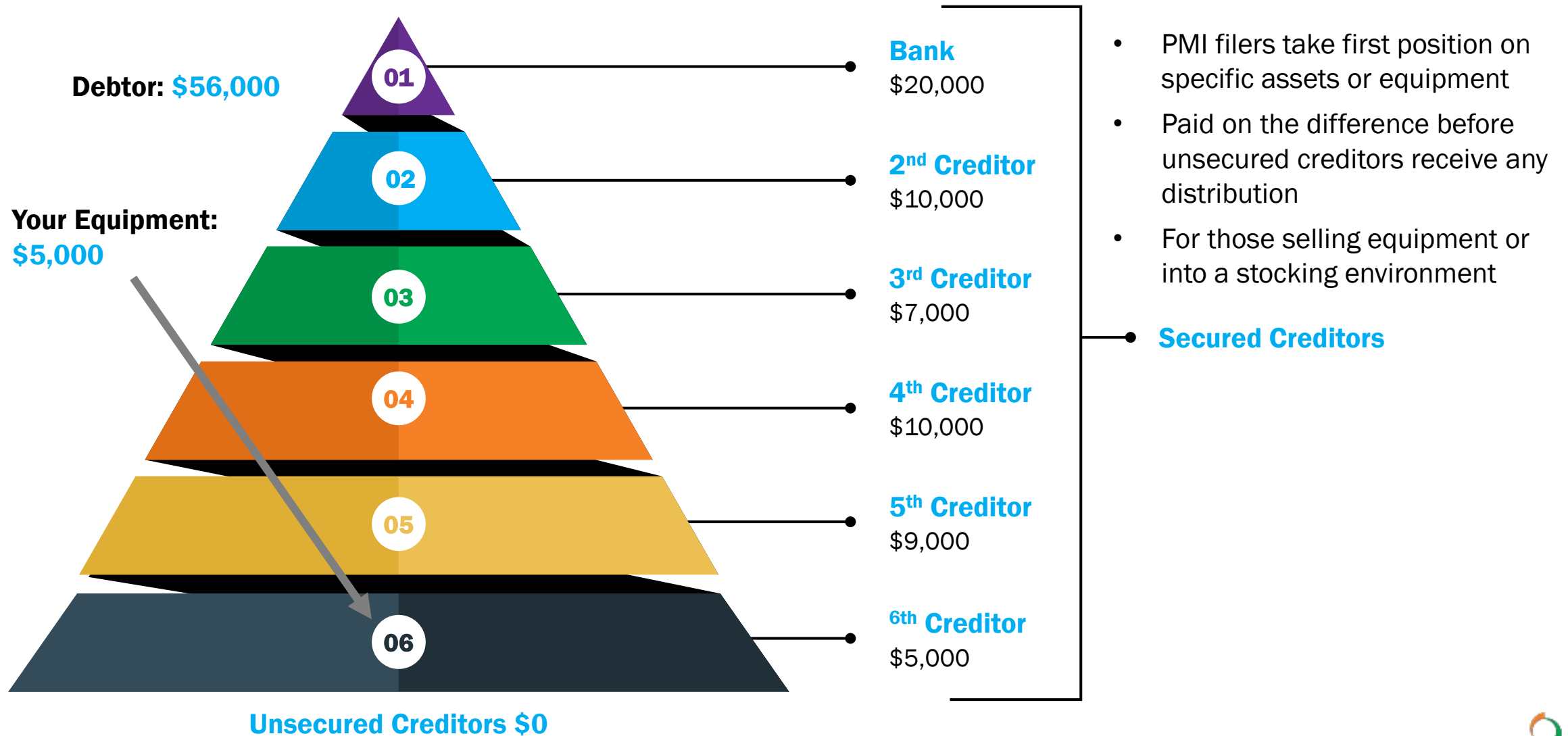
There is value in  
repossessing those goods

# Collateral: PMSI

All inventory manufactured by or distributed by Secured Party, whenever sold or consigned, to or for the benefit of Debtor by Secured Party, wherever located, now owned and hereafter acquired including but not limited to all XXX brand sewing machines, and all proceeds from the sale thereof; and all existing or subsequently arising, accounts, and all accounts receivable which may from time to time hereafter come into existence during the term of this Security Agreement.

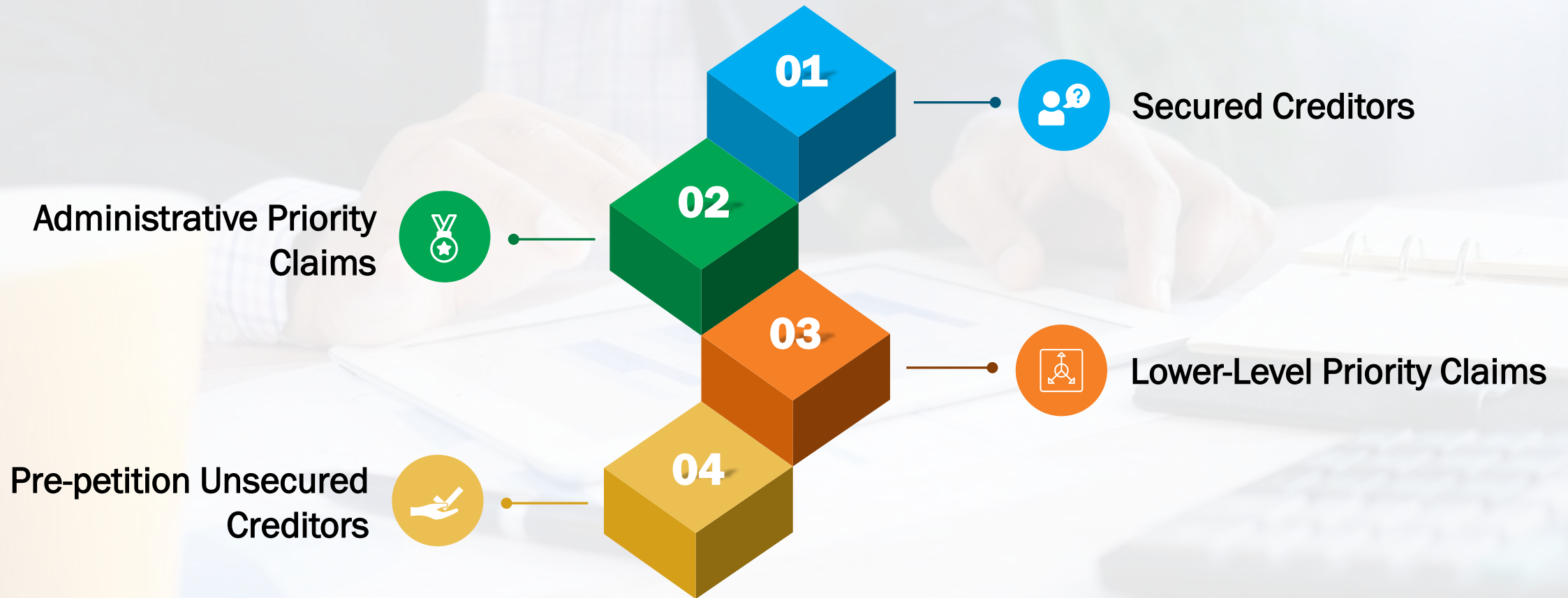


# Purchase Money UCC Filings Chapter 7



# Priority in UCC Filings

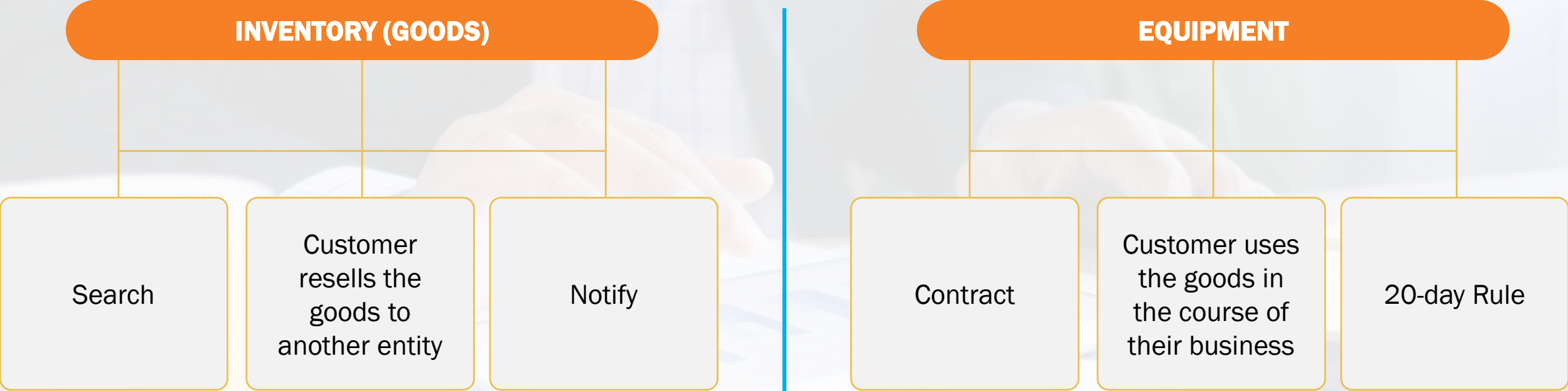
Claims are paid based on where they are situated on the claims priority ladder.



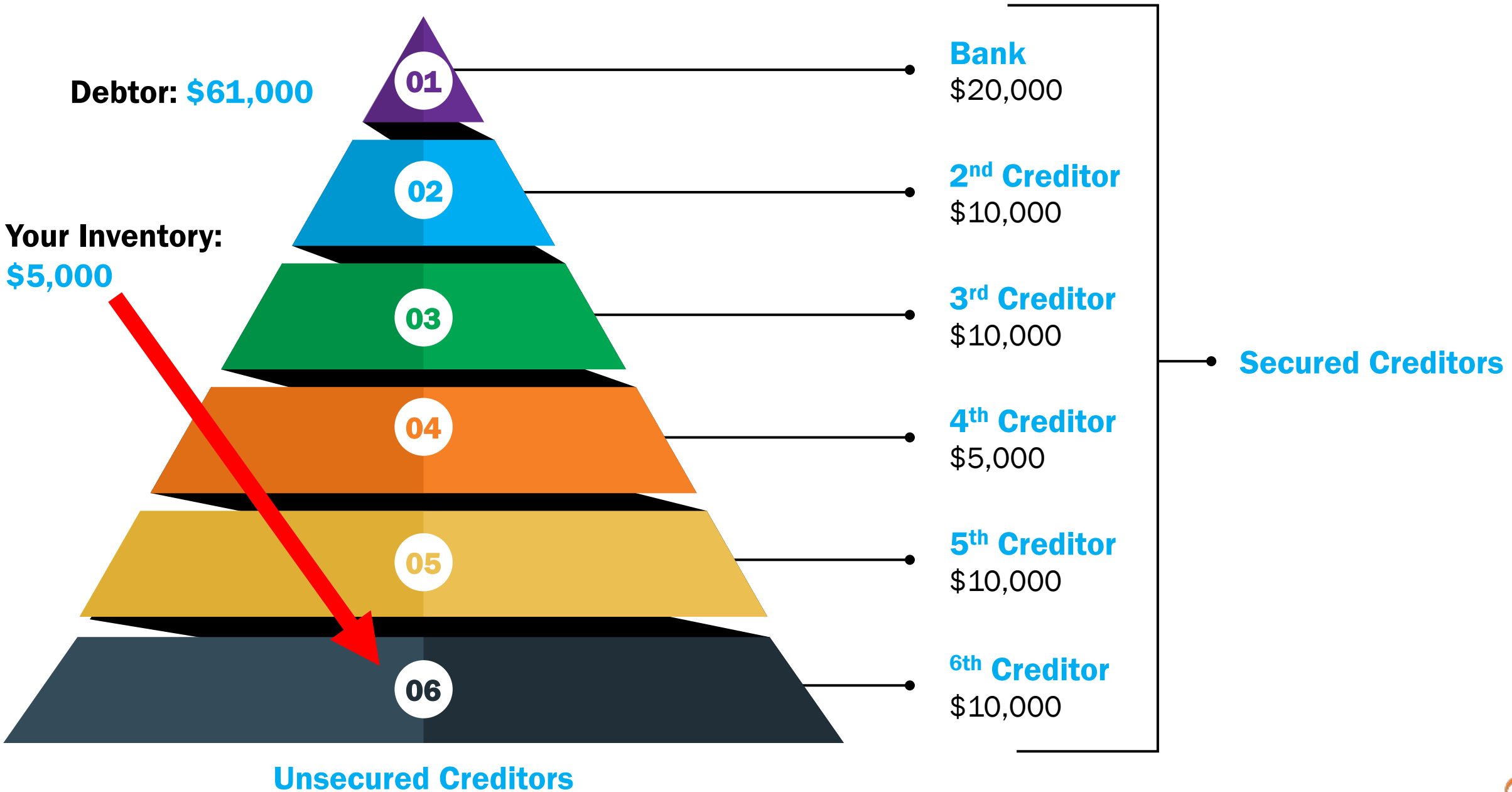


# Inventory vs. Equipment

It depends on what your customer does with the goods you sell to them.  
Is your customer **reselling** or **using** your products in their business?



- Goods that are consumed in a business (e.g., fuel used in operations).
- Goods that are leased or rented by the debtor.

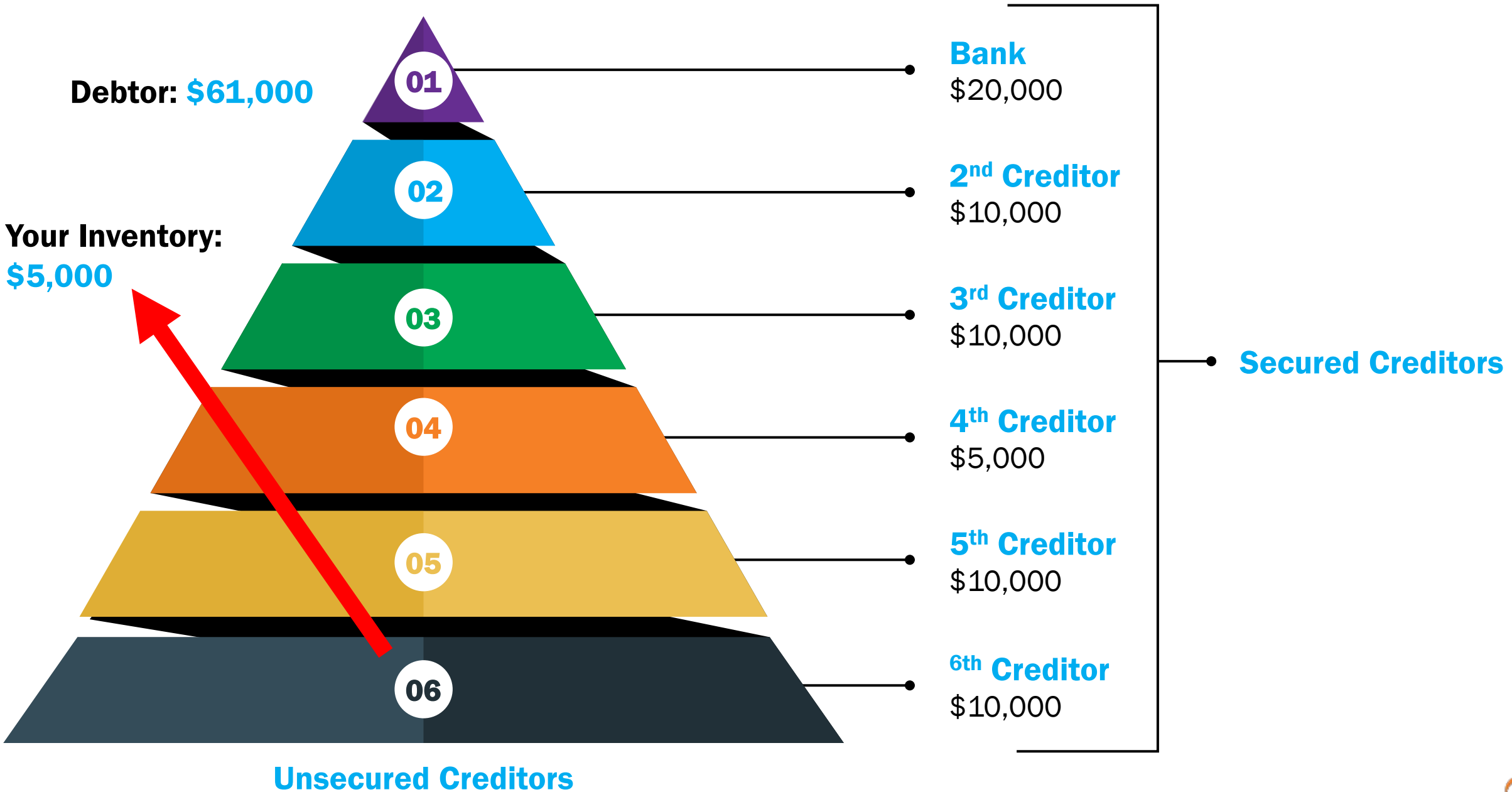


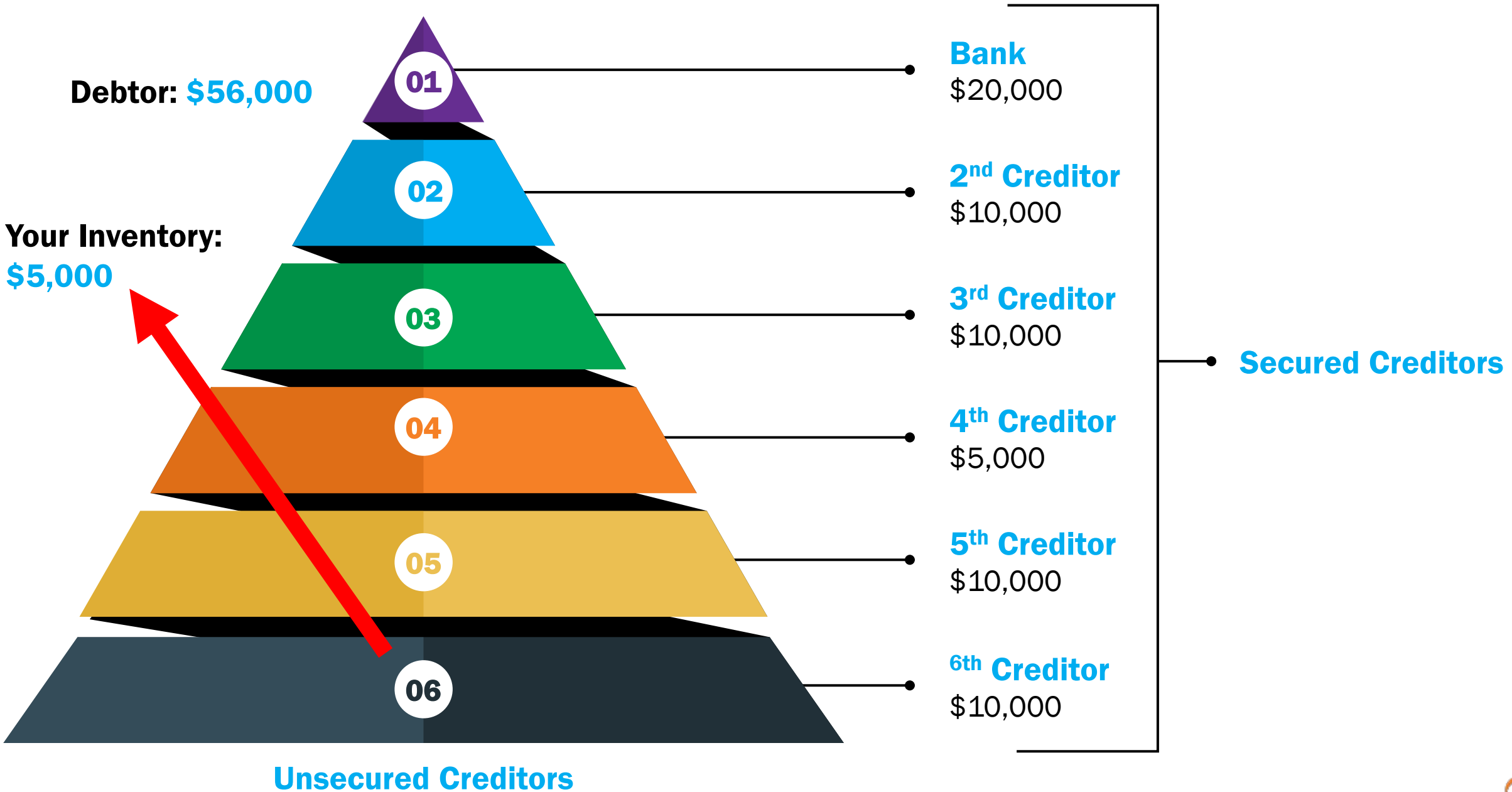


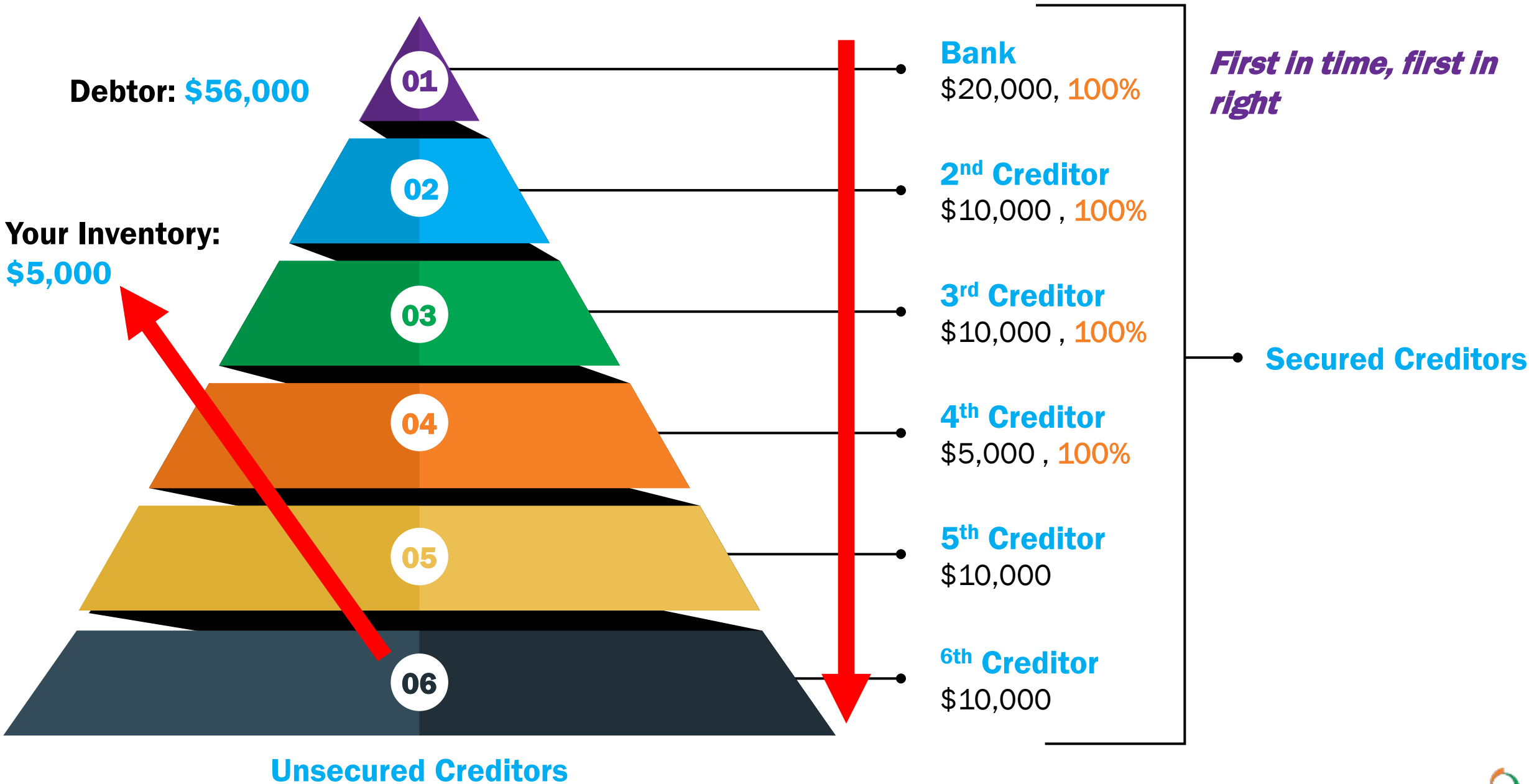
**NCS**  
**CREDIT**

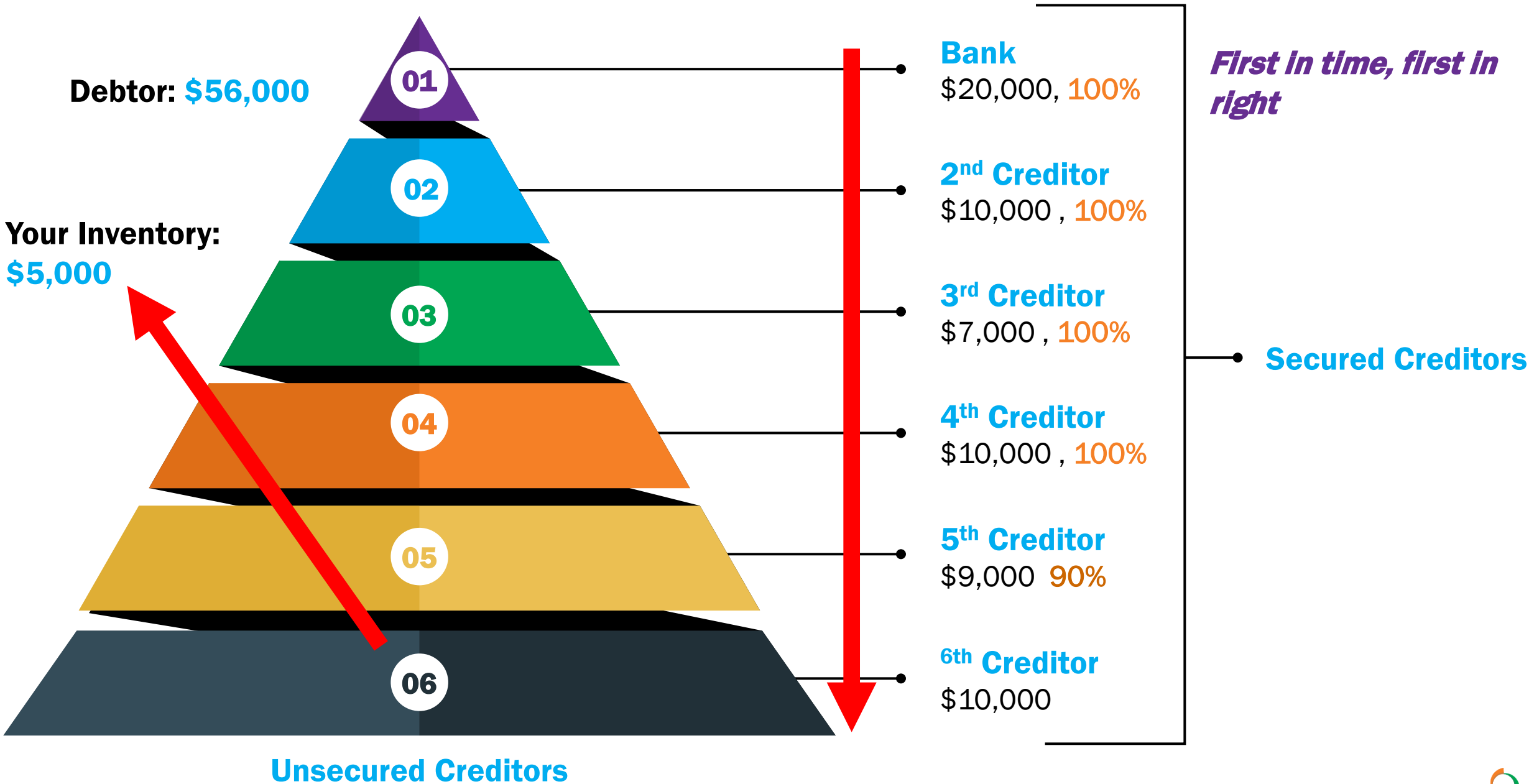
# **Chapter 7**

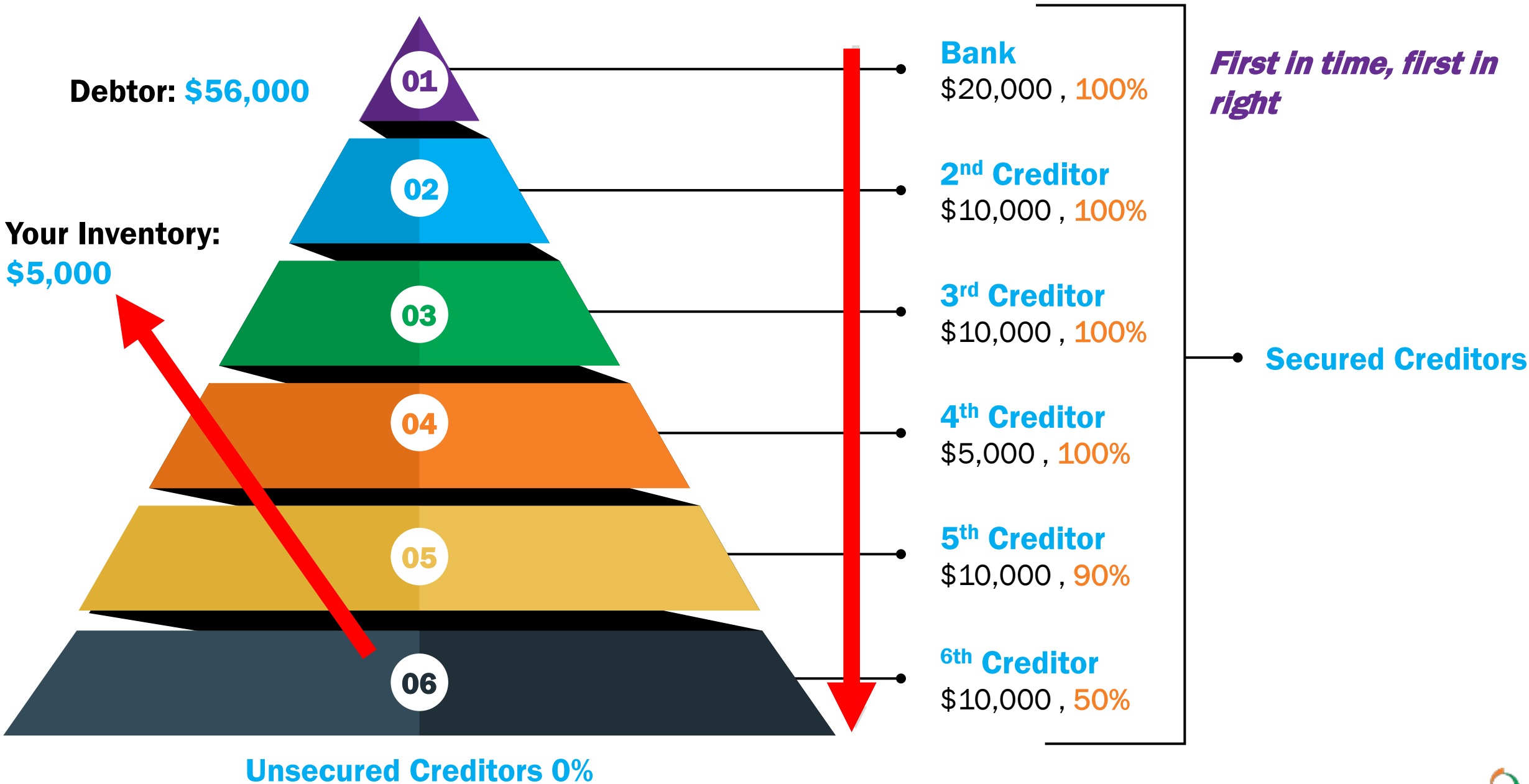
**Bankruptcy**





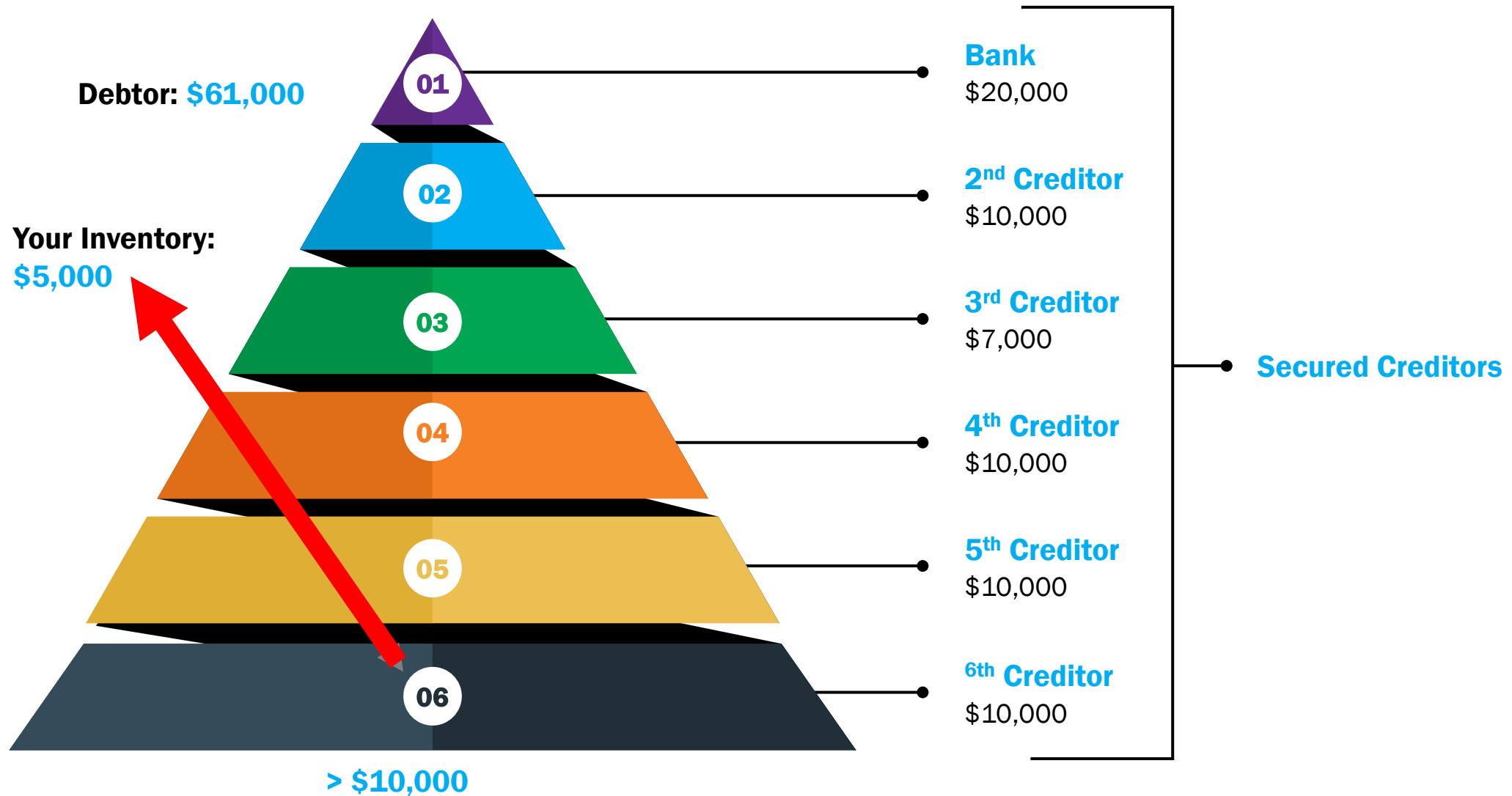




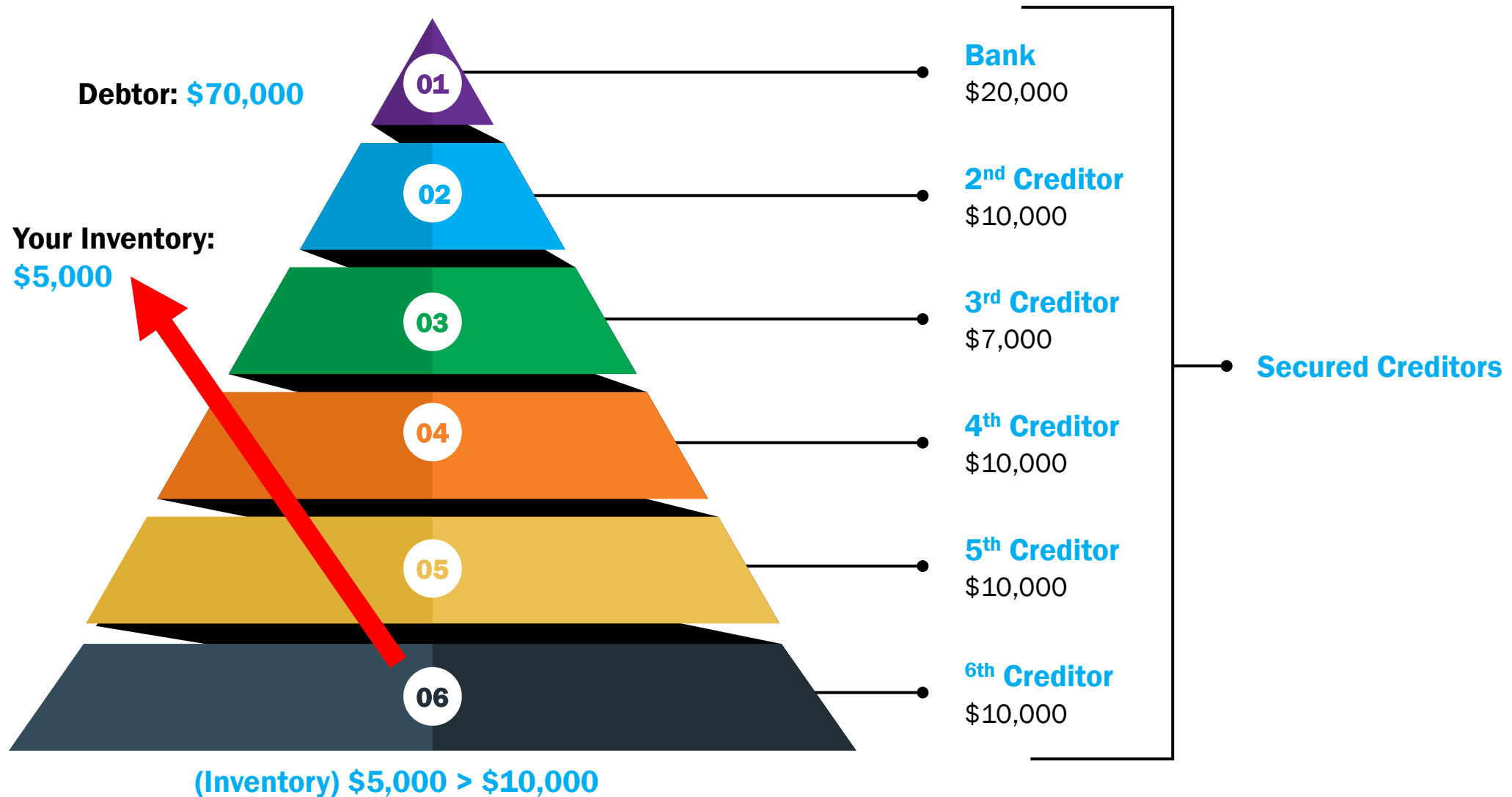




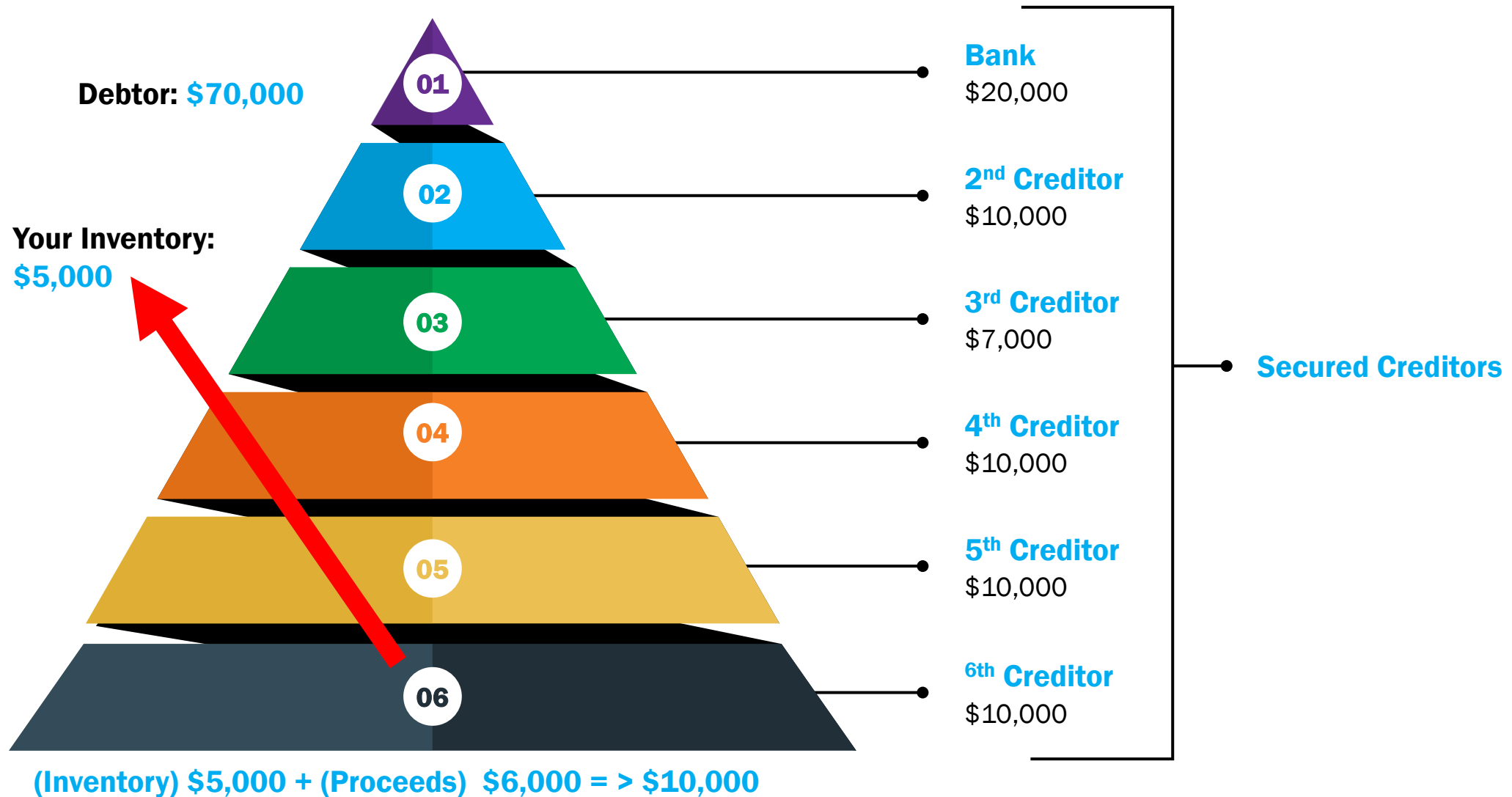
# Collateralized to the extent you are owed money



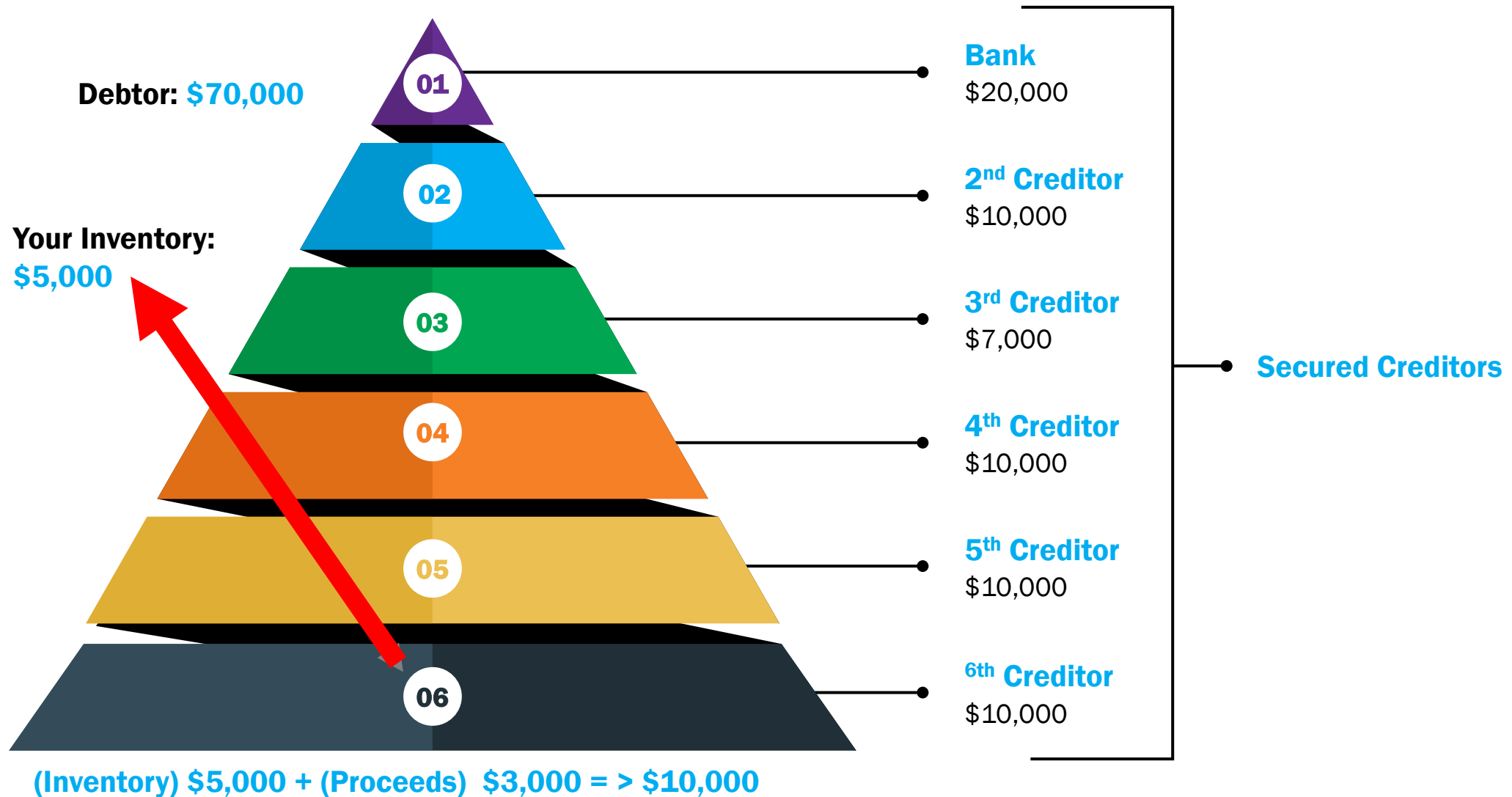
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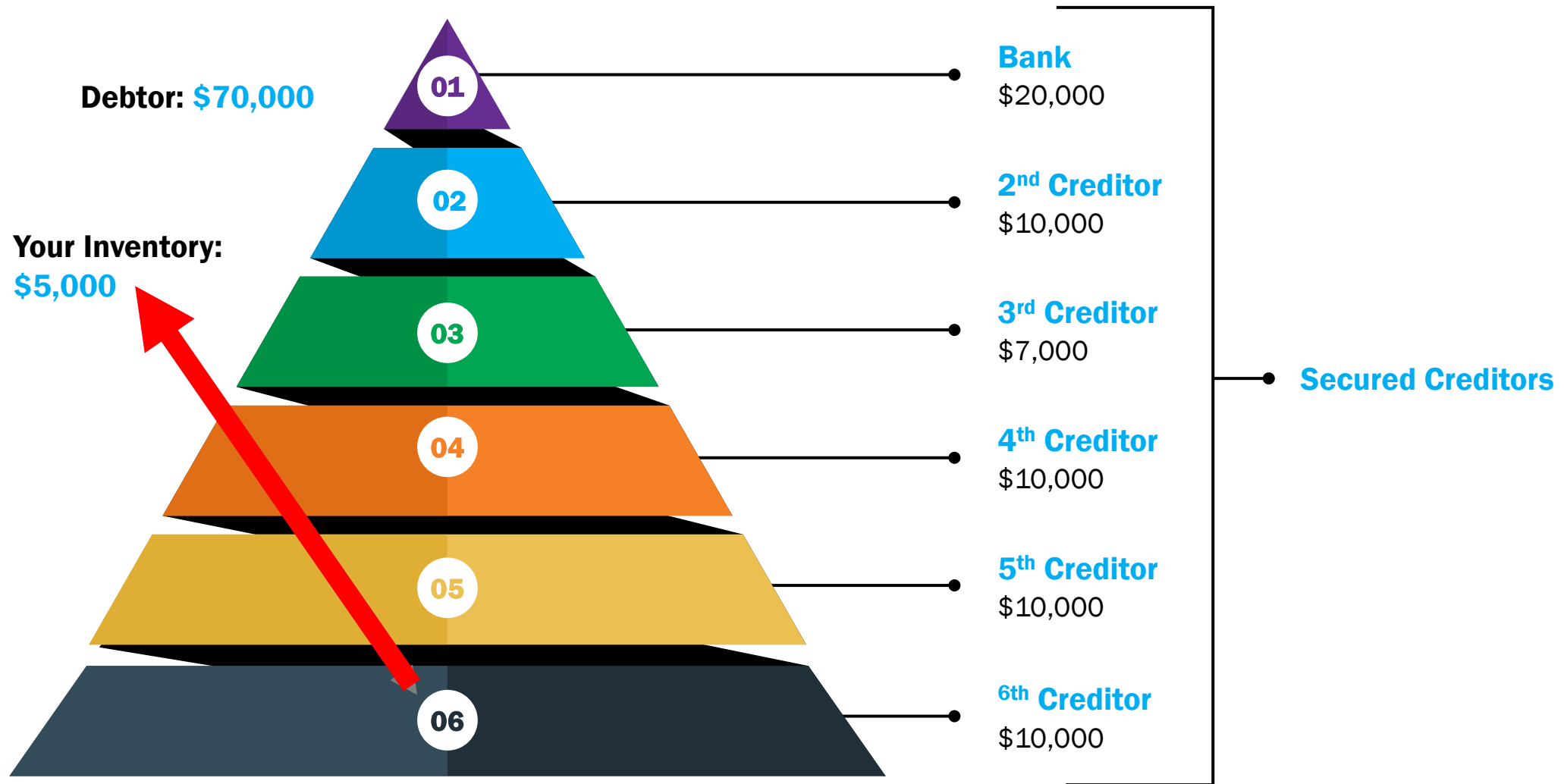
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# Collateralized to the extent you are owed money



**(Inventory) \$5,000 + (Proceeds) \$3,000 (A/R) \$10MM = > \$10,000**

# Creating A Reason

- Declare the debtor in default of the terms of their security agreement
- Advise them they must cease and desist selling the inventory or using the equipment



# Creating A Reason

- Set a cure period
- Inform the debtor if payment isn't made by the cure period, the secured party will begin repossession proceedings
- Set a date and time for repossession



# Creating A Reason

- Depending on what the security agreement calls out, advise the debtor that they must assemble the inventory and have it conveniently available for pickup
- Inform the debtor the next step is to send a notice for disposition of collateral to all other secured parties, which may include their bank



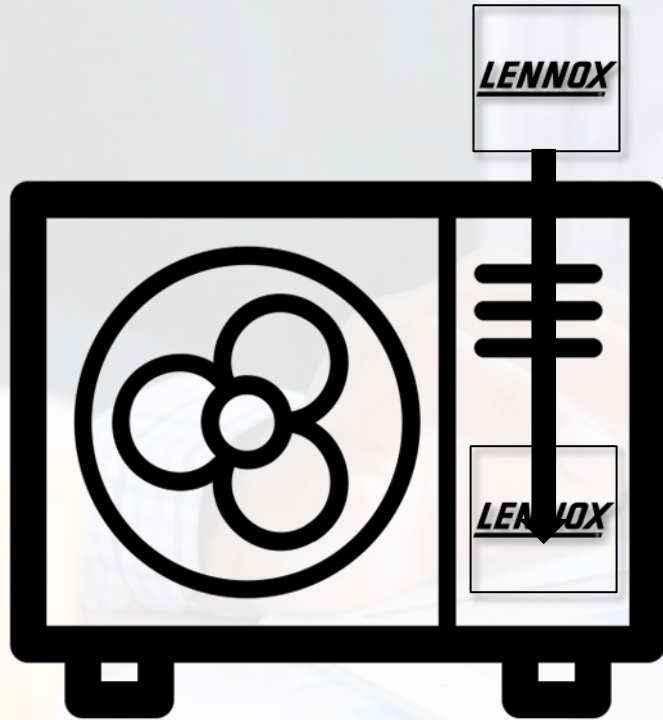




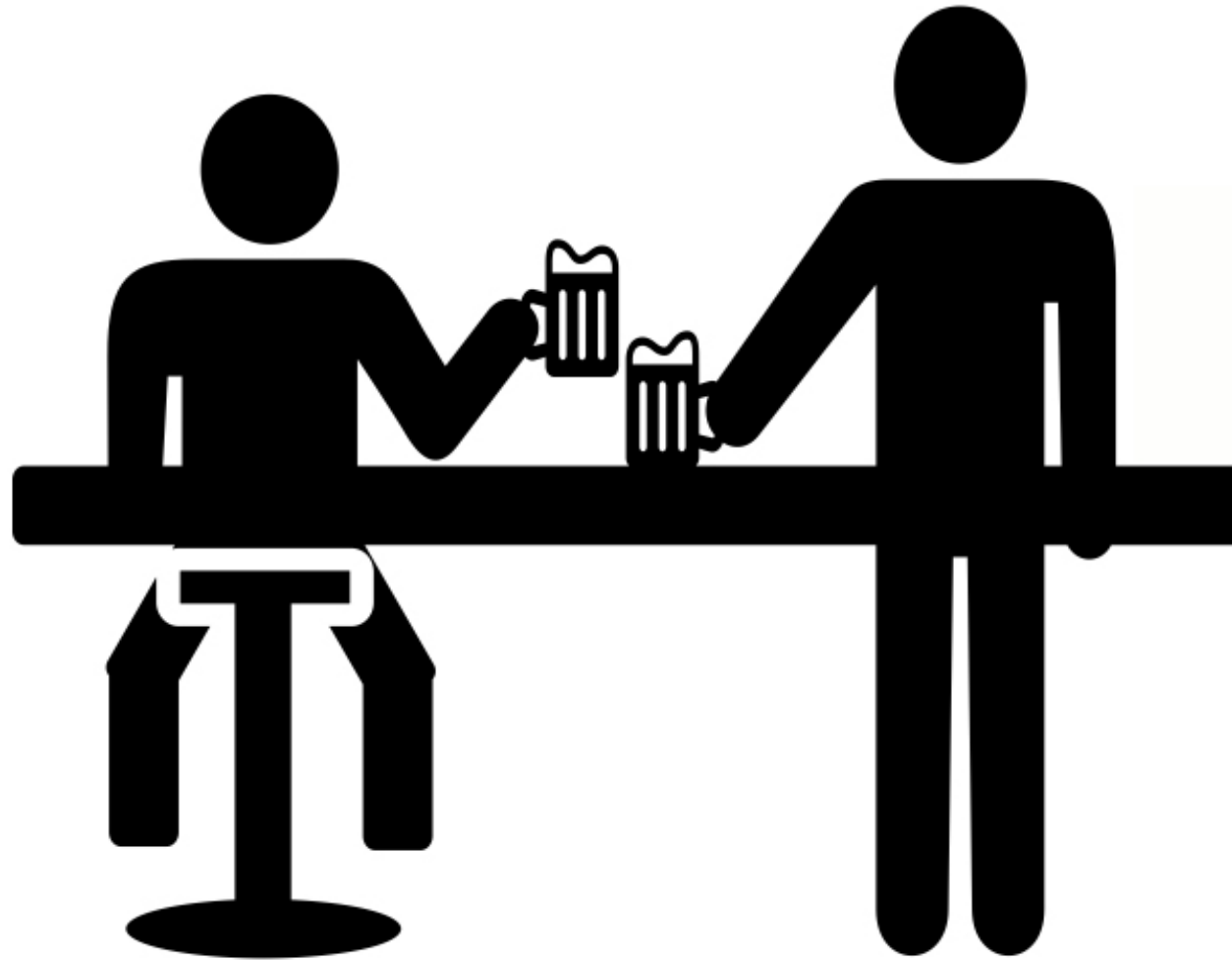
# PMSI: The Value of Repossession

1. Resale
2. Differentiating your receivables

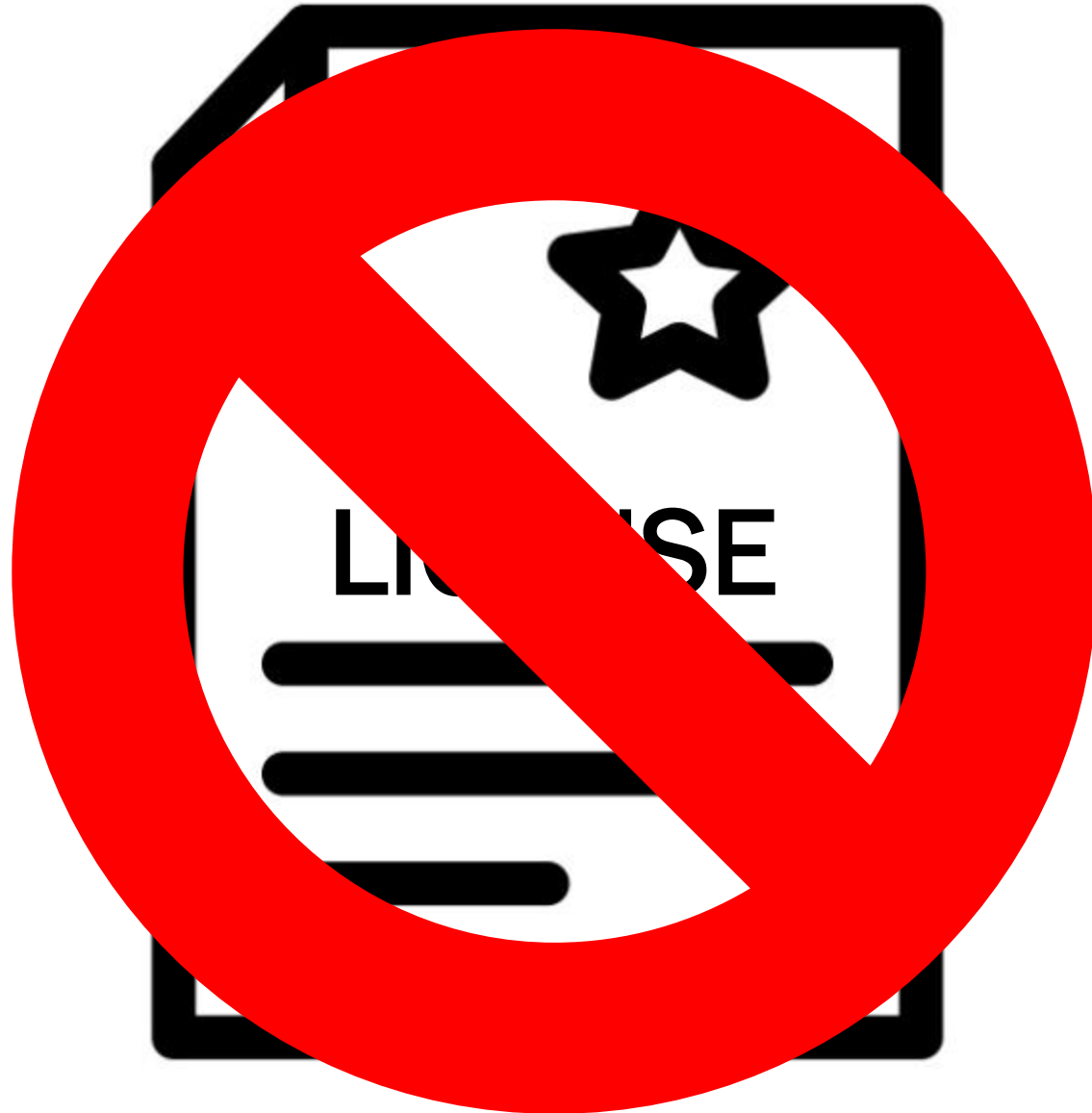
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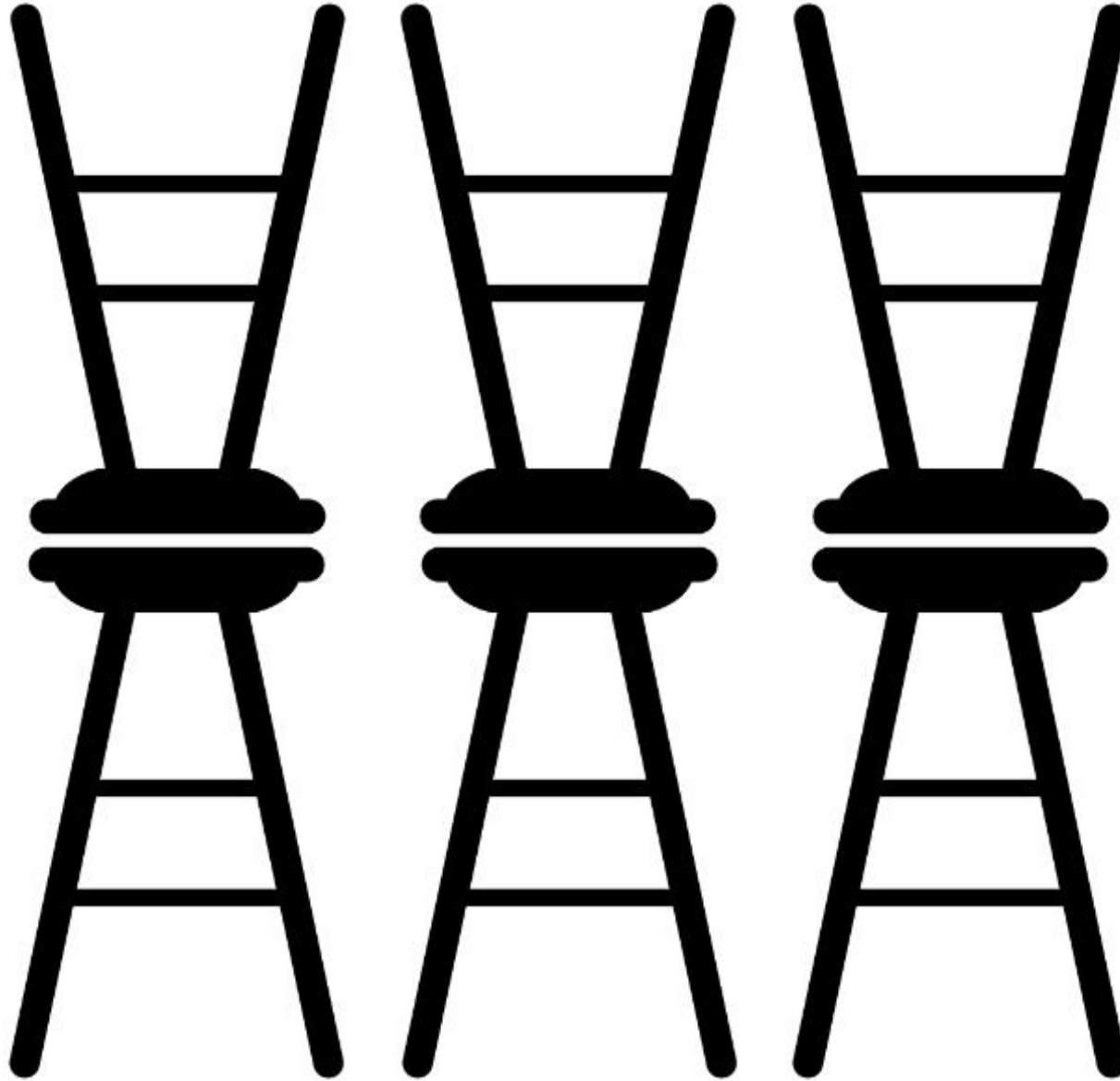


**ServiceInterruptis**







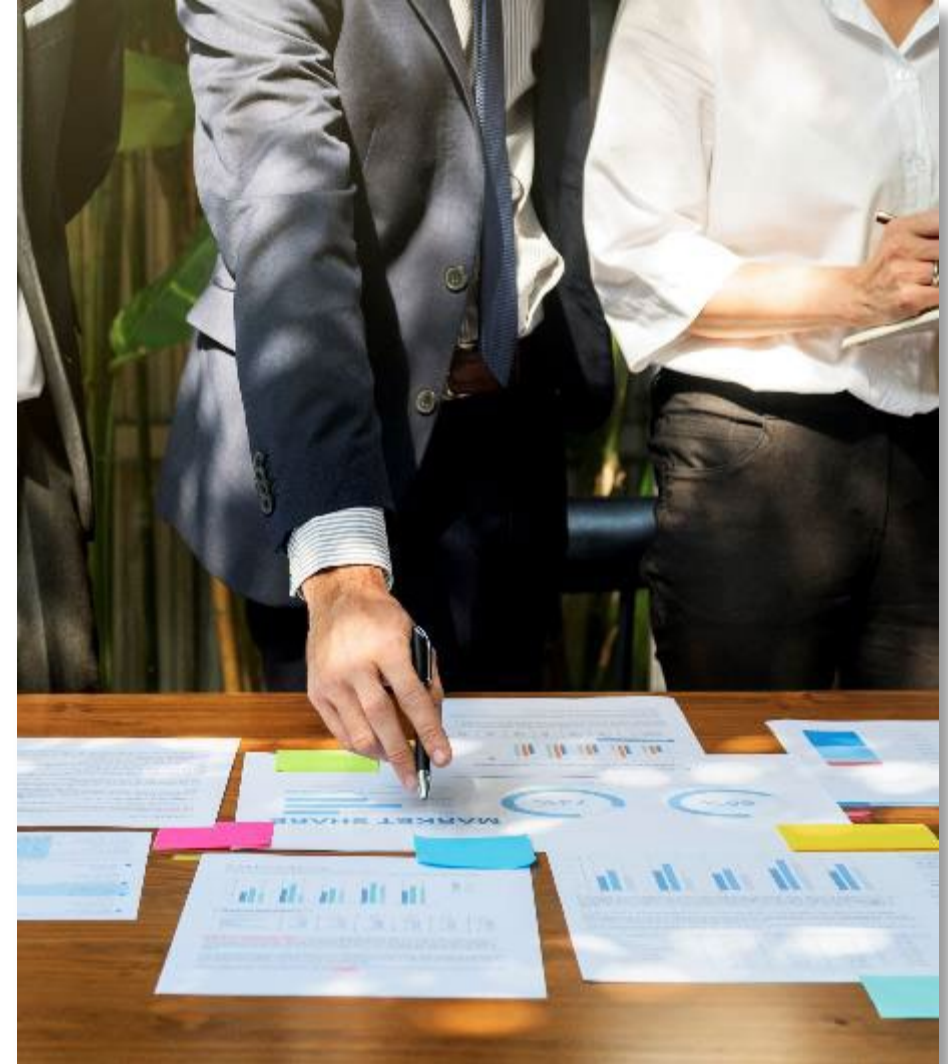


# Disposition of Tangible Collateral

## §9-609. Secured Party's Right to Take Possession After Default.

**Secured party has the right to take possession of collateral upon default.**

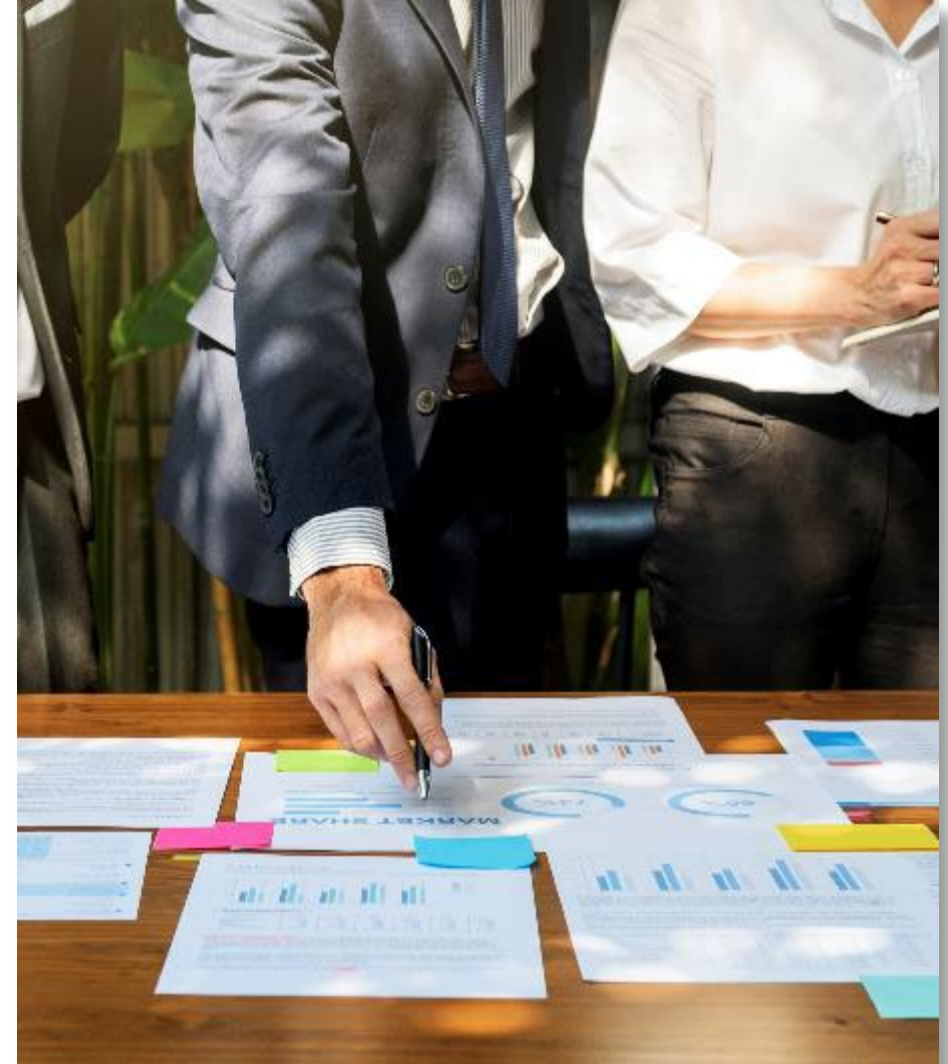
- Voluntary or legal
- May proceed without judicial process
- May not breach the peace
- Recovery through stealth or deception is permitted!



# Disposition of Tangible Collateral

**(1) A secured party may sell, lease or otherwise dispose of any or all of the collateral in its:**

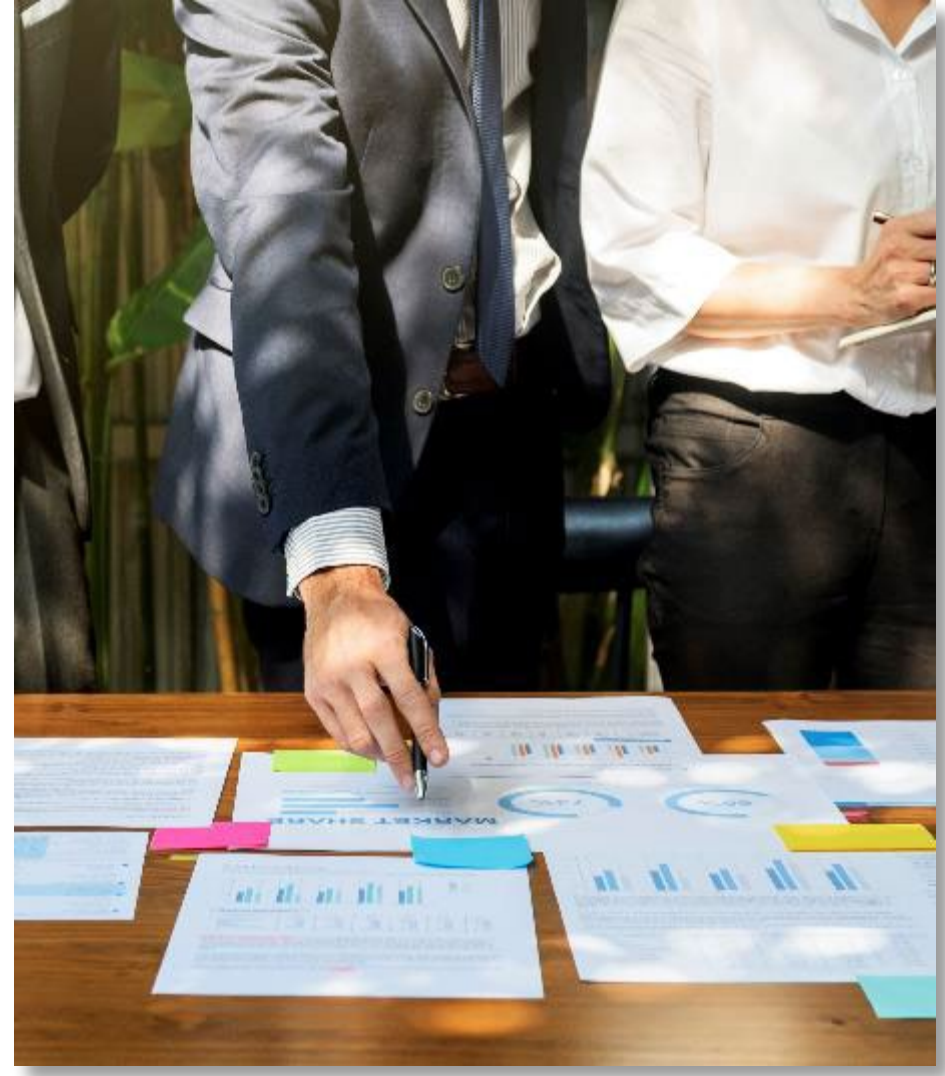
- Then condition
- Following any commercially reasonable preparation or processing





# Disposition of Tangible Collateral

In the case of some collateral such as heavy equipment, the physical removal from the debtor's plant may be impractical. In lieu of removal, the secured party may render the equipment unusable and/or may dispose of the collateral on the debtor's premises.



# Disposition of Tangible Collateral

The proceeds of disposition shall be applied in the following order:

Repossession and  
storage costs

01

Satisfaction of the  
indebtedness

03

Attorney fees

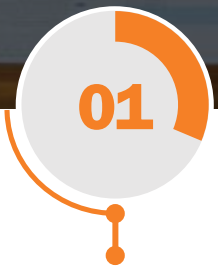
02

Other secured parties  
with an interest in the  
collateral

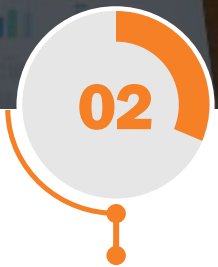
04



# Types of Disposition of Collateral



Public or Private Proceedings



In Units, Parcels or Entirety



Commercially Reasonable

# Notification of Disposition of Collateral

## The contents of a Notification of Disposition are sufficient if the notification:

- Describes the debtor and the secured party.
- Describes the collateral that is the subject of the intended disposition
- States the method of intended disposition

 **NCS** CREDIT  
From Protection to Collection [www.ncscredit.com](http://www.ncscredit.com)

PO Box 24101 • Cleveland, OH 44124  
729 Miner Road • Highland Hts., OH 44143  
(800) 826-5256 • Fax (440) 461-5413

### NOTIFICATION OF DISPOSITION OF COLLATERAL

To: *[Name of debtor, obligor, or other person to which the notification is sent]*

From: *[Name, address, and telephone number of secured party]*

Name of Debtor(s): *[Include only if debtor(s) are not an addressee]*

*[For a public disposition:]*

We will sell *[or lease or license, as applicable]* the *[describe collateral]* *[to the highest qualified bidder]* in public as follows:

Day and Date:

Time:

Place:

*[For a private disposition:]*

We will sell *[or lease or license, as applicable]* the *[describe collateral]* privately sometime after *[day and date]*.

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell *[or lease or license, as applicable]* *[for a charge of \$ ]*. You may request an accounting by calling us at

*[telephone number]*

# Notification of Disposition of Collateral

## The contents of a Notification of Disposition are sufficient if the notification:

- States the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting

 **NCS** CREDIT  
From Protection to Collection [www.ncscredit.com](http://www.ncscredit.com)

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# Transfer of Secured Interest

Section 9-315 (a)(1) of the UCC states that a security interest continues in collateral that is sold, leased, etc., unless the secured party authorized the disposition free of the secured interest.



# Transfer of Secured Interest

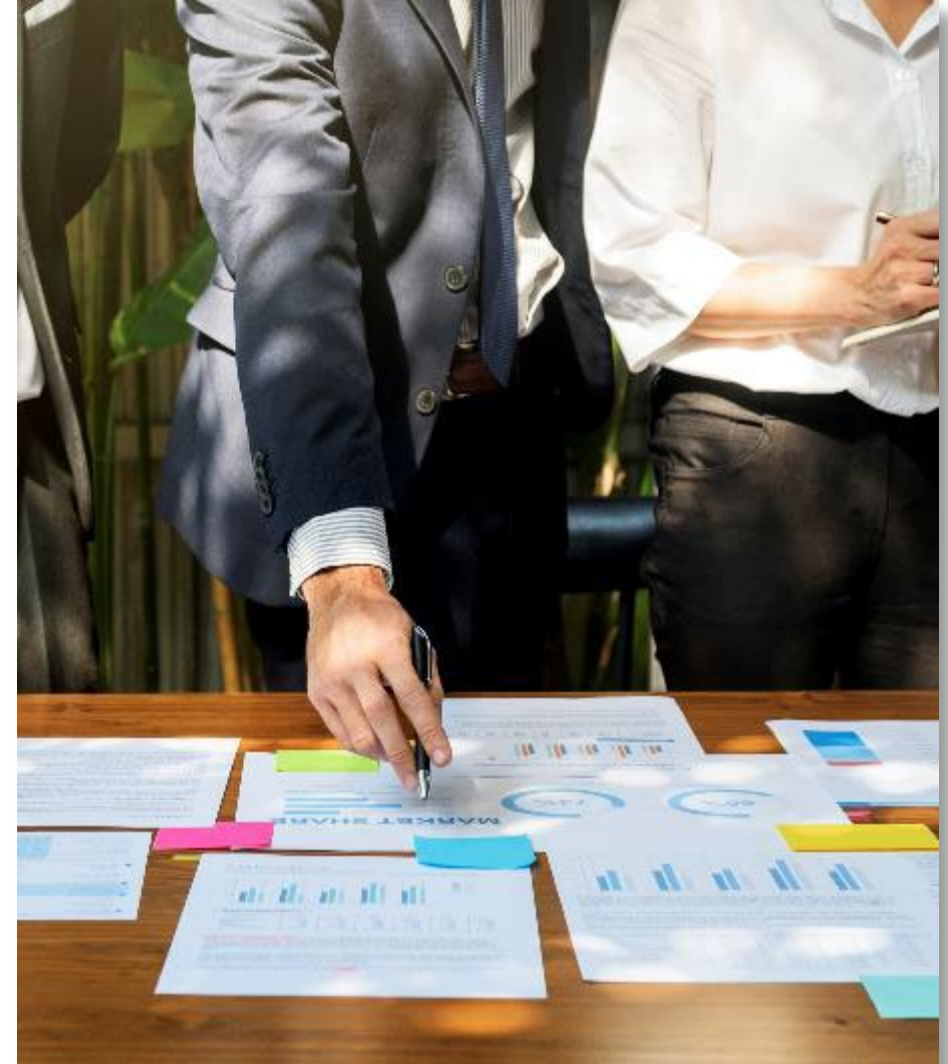
The authorization can be either be explicit or implicit



# Disposition of Intangible Collateral

Upon default a secured party “may notify an account debtor to pay the account directly to the secured party and not the debtor.” UCC 9-607(a)(1)

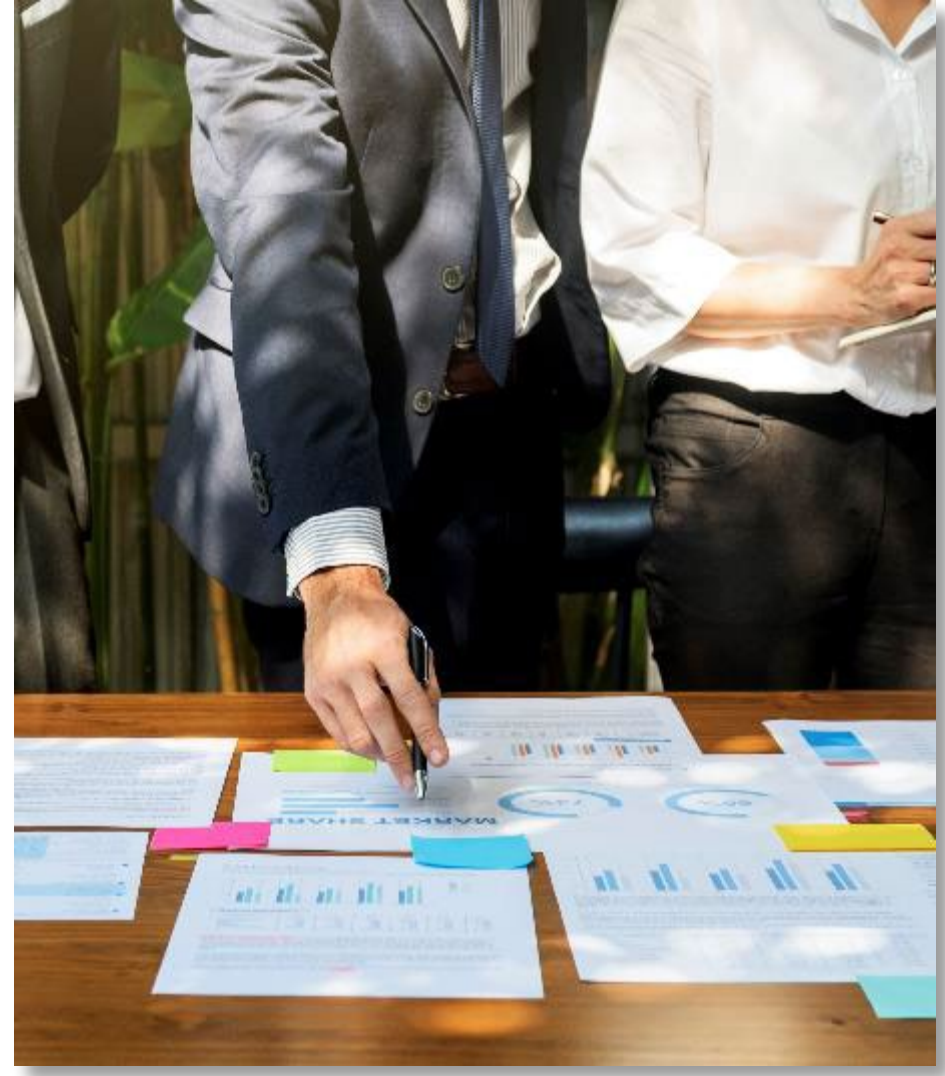
In addition, the secured party may collect proceeds to which it is entitled under 9-315 and may commence legal action against third parties to collect accounts and other obligations. UCC 9-607(a)(2)





# Disposition of Intangible Collateral

These provisions are broader in scope than former UCC 9-502 because they not only apply to collection accounts but also permit enforcement.



# All attorneys are not created equal...

**ATTORNEY:** Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

**WITNESS:** Did you actually pass the bar exam?

**ATTORNEY:** The youngest son, the 20-year-old, how old is he?

**WITNESS:** He's 20, very close to your IQ.

**ATTORNEY:** Were you present when your picture was taken?

**WITNESS:** Are you sh#!!ing me?



Charles M. Sevilla, *Disorder in the Court: Great Fractured Moments in Courtroom History*, W.W. Norton and Company, 1999

# All attorneys are not created equal...

- How many times have you committed suicide?
- Was it you or your brother who was killed?
- Do you have any children or anything of that kind?
- Without saying anything, tell the jury what you did next.
- Were you alone or by yourself?



Charles M. Sevilla, *Disorder in the Court: Great Fractured Moments in Courtroom History*, W.W. Norton and Company, 1999

# Review of Topics Covered



01

UCC filings provide valuable protections when your customers file chapter 7 or 11 bankruptcies

02

They also provide remedies when your customer defaults on their payment terms

03

Just as importantly, they create leverage for you to get paid ahead of other creditors

04

Important considerations are:

- Your security agreement
- The collateral description
- Following the correct procedures when filing



# QUESTIONS

# Thank you for your time!

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## Contact Us



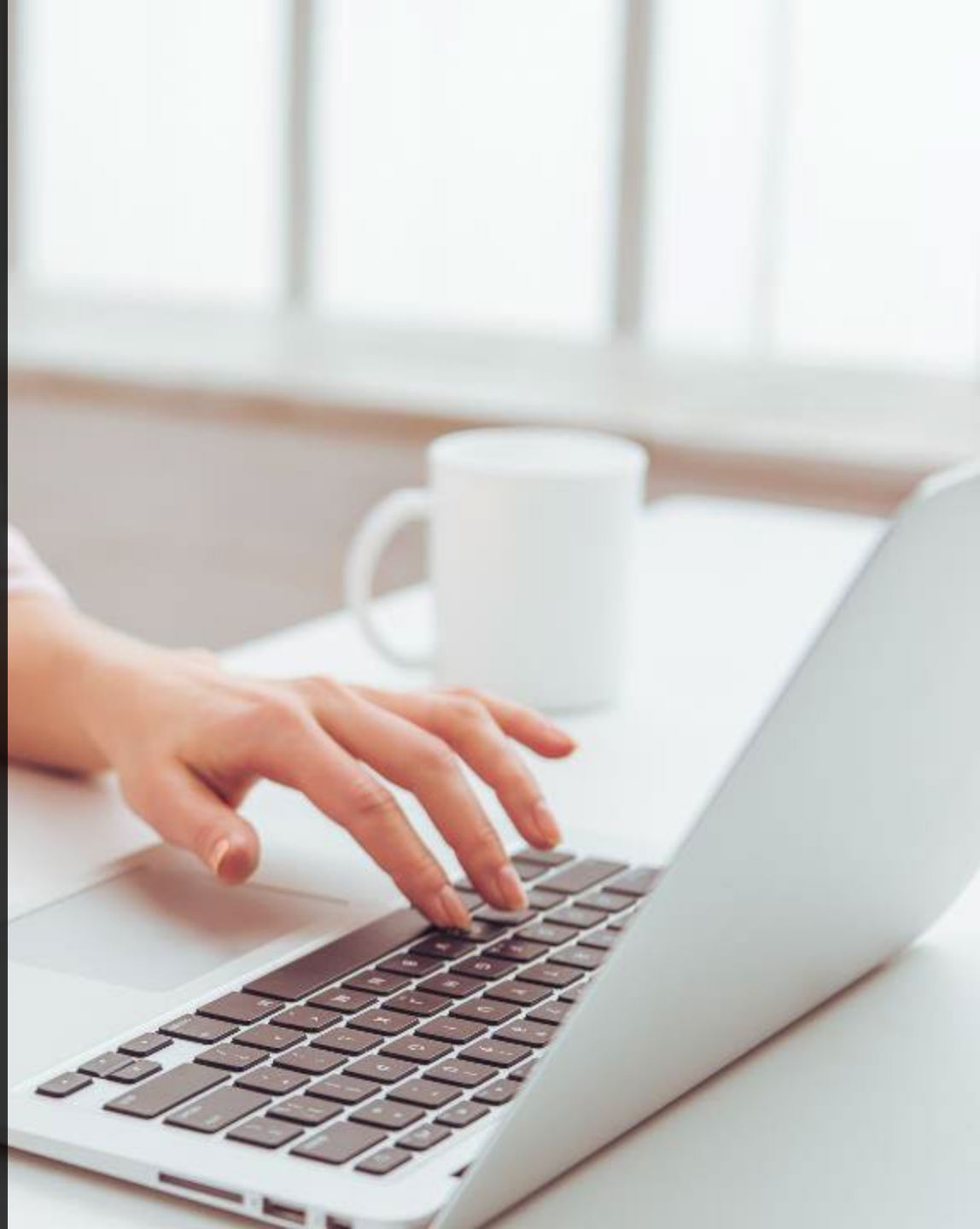
[www.ncscredit.com](http://www.ncscredit.com)



**Jerry Bailey**  
jbailey@ncscredit.com



800-826-5256 ext. 177



# Education & Resources

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