

30

Commercial Credit Management Tips



NCS' Commercial Credit Management Tips

Here are 30 of our top commercial credit management tips from our Collection, UCC filing, and Notice & Mechanic's Lien Services.

Collection Services

Tip 1: Up-to-Date Credit Apps Aid in Collections

Make sure you have a corporate credit policy in place to update your debtors' credit applications annually or, at the very least, if/when they request an increase in credit.

Companies are often changing names, locations, banks, officers (just to name a few) and, as their creditor, it's critical to have accurate and current information on hand. Then, in the event your customer defaults on payment, you'll have a reliable and up-to-date credit application to aid in your collection success.

Tip 2: 9 Documents Every Collector Should Have

Here are 9 documents you should include with any collection placement:

- copy of the contract or agreement
- copy of the credit application
- copies of invoices & a statement of account
- copies of proof of delivery/bill of lading
- copy of the personal guarantee
- your customer's trade references (including bank name, account number, and copies of returned/NSF checks)
- copies of correspondence & notes (emails, notices, demand letters, documented phone calls)
- copy of the corporate certificate, and copies of credit report(s)

Tip 3: Pull a Credit Report for the Correct Entity

It's vital to obtain the correct credit history and information for your customer. Here are a few key pieces of information that will assist you with pulling credit info on the correct company:

- Customer's corporate legal name
- Customer's address (or alternate addresses)
- Customer's web address
- Contact info for officers and/or owners of the company

Tip 4: Filing a Bankruptcy Proof of Claim as a Secured Creditor

Whenever possible, creditors should file a Proof of Claim as a secured creditor. In the event of a debtor's bankruptcy, secured creditors are paid before unsecured creditors.

Properly executing a mechanic's lien, bond claim or UCC grants the creditor a secured interest, which increases the likelihood of payment in the event of a bankruptcy.

A creditor may also be considered secured if there is a Corporate Guarantee or Personal Guarantee in place. Remember, a creditor can have a secured & unsecured claim in the same bankruptcy.

Tip 5: Avoid Common Mistakes with the Bankruptcy Proof of Claim Form

Here are three things to remember when filing a Bankruptcy Proof of Claim form:

- Be on Time. Too often, creditors miss the bar date to file.
- Know Your Claim. Including all amounts owed for all accounts and affiliates is a must.
- Secured or Unsecured? Know whether you are a secured creditor and file properly.

Tip 6: Consider using a Customized Letter for Collection

Do you have accounts that are past due, but you are not ready to place them for collection? If you are looking for a less aggressive collection tool, talk to us about our flat fee, customizable letter writing series.

Our team will work with you to create the perfect series for your needs. We've customized thousands of letters for clients over the years. We use that knowledge and experience to create the best letter for your situation.

Tip 7: Benefits of Doing an Asset Search Prior to Filing Suit

Typically, once an attorney has filed suit and obtained judgment, creditors look to asset searches to reveal banking information, properties, vehicles, etc. against which to attach their judgment.

However, there are creditors who run asset searches prior to placing their claims with a collection attorney. Why would they run an asset search prior to suit? Because creditors want to know if it is worth the time and money to file suit, move through litigation and obtain judgment.

An asset search can be run at any time, on an individual and/or a business. It helps to locate addresses & phone numbers and a full-service asset search includes:

- Employment
- Business affiliation
- Vehicle ownership
- Real property ownership
- Banking relationships
- Bankruptcies
- Liens
- Judgments
- Notices of defaults
- UCC filings

Tip 8: Be Aware of Customer Name and/or Structure Changes

Who is your customer? In recent years, we have seen many mergers and corporate structure changes. It is vital for creditors to be cognizant of any debtor name and/or structure changes, especially when utilizing the collection and litigation process. Suing the wrong entity could result in the court case being dismissed and negatively affect any possible recovery.

What is a creditor to do? You could add a clause within your contract/credit application requiring debtors to notify you within 30 days of these changes and consider enrolling your customers in the NCS Corporate Monitoring Program. With the monitoring program, you will be alerted to registered entity changes reported by the Secretary of State Corporation Division.



Tip 9: Personal Guarantees are a Great Tool, Even Better When Notarized

Most credit professionals would agree that personal guarantees ("PG") are an effective tool used to reduce credit risk. A guarantee can create a sense of comfort for the creditor, especially when the creditor is shipping on an open account with no other security or leverage.

The personal guarantor, who is often an officer of the company, may pay closer attention to debts that are personally guaranteed to avoid personal lawsuits for collection of the debt. Frequently, the personal guarantor will instruct that those debts which are not personally guaranteed remain unpaid.

As a best practice, require the personal guarantee to be notarized to eliminate the personal guarantor's claim of a forged signature. Also, consider filing a UCC even when a personal guarantee has been issued.

Tip 10: 4 Signs Your Customer May Be in Financial Distress

Business failure is inevitable. It is imperative that you, as a creditor, protect yourself from a customer's failure/default. Your best defense? Be proactive. Take advantage of secured transactions (UCCs and Mechanic's Liens) and pay attention to signs of distress:

- **Change in Corporate Status:** Monitor your customer's corporate standing with the Secretary of State, as a change in corporate status is an early sign of distress. Negative changes in status could indicate the company is preparing to close.
- **Pay-When-Paid:** In this case, it's the infamous "I can't pay you until I get paid" or "The check's in the mail." They may also say "We are waiting on financing from the bank. Once the bank loan goes through, we will pay you." This is a sign of poor cash flow/lack of working capital...and it's dangerous territory.
- **Broken Promises:** This is in line with "the check's in the mail." These promises include promises to pay, promises to contact you with updates on payment status and promises of quicker payment if additional credit can be extended.
- **Silence:** Unreturned calls, unread emails, a disconnected phone number, and undeliverable mail & email are all signs of silence. And, when money is owed, silence is never a good thing. When you no longer have your customer's cooperation or, in this case, communication, it may be time to look at hiring a third-party agency or attorney.

UCC Filing Services

Tip 11: Timely File Your UCCs

You should file your UCC-1 *before* you ship goods to your customer. As soon as you have the signed Security Agreement, file your UCC to ensure you're a secured creditor.

To properly perfect your security interest, you must understand the different types of UCC filings and the respective filing deadlines. Failure to meet deadline requirements may jeopardize your position as a secured creditor.

- PMSI in Equipment (US Filing) – the UCC-1 must be filed no later than *20 days* from the date your customer receives the equipment.
- PMSI in Equipment (Canadian filing) – the PPSA must be filed no later than *15 days* from the date your customer receives the equipment.
- PMSI in Inventory or Consignment – the UCC-1 must be filed, a reflective UCC search performed, and notification letters should be sent and received *prior* to shipping inventory to your customer. Shipping inventory before you've completed these steps may result in an unsecured status.
- Blanket – the UCC-1 should be filed *prior* to shipping goods to your customer.

Note, the definition of “receipt” is hotly contested in courts; to be most conservative, NCS calculates based on the date you first shipped equipment to your customer.

Tip 12: The Proper Time to Terminate a UCC

Section 9-513 of the Uniform Commercial Code states that a secured party must terminate a UCC filing within 20 days of a request from the debtor if any of the following exist:

- There is no obligation secured by the collateral and no indication there will be a future obligation
- The Financing Statement covered consigned goods that are no longer in the debtor's possession
- The debtor never authorized the filing of the original financing statement

Otherwise, the UCC filing will remain active until the 5-year lapse date. This can cause financial complications between the debtor and their bank. Terminate your UCC filings in a timely manner.

Tip 13: Understand the Difference Between a Corporate Certificate and Articles of Incorporation

The UCC 2010 Amendment changes to Article 9 regarding the debtor name state that when filing a UCC on a registered organization, you must review the “public organic record” (i.e. Articles of Incorporation) to verify the entity legal name including any amendments and reinstatements.

The state’s public record (Corporate Certificate) is a representation of the public organic record that has been data entered. This is insufficient because there can be clerical errors in the name that could deem the UCC filing seriously misleading and may leave you unsecured.

Tip 14: Monitor for Name Changes

Are you aware that if your customer changes their name you must amend your UCC Filing or your security is jeopardized?

Section 9-507 (c) of the UCC tells us that we have 4 months to amend our UCC filing when the debtor name changes. If not amended, the UCC filing is not effective to perfect a security interest in collateral acquired by the debtor before or within four months after the change.

Make sure your Security Agreement requires the debtor to advise you of any changes to name, address, or organizational structure. It is the secured party’s responsibility to ensure the UCC filing is updated and contains the correct information. Best practice is to monitor your customer for change.

Tip 15: Maintain Priority in Inventory

When continuing a Purchase Money Security Interest in inventory filing, be aware of the requirement to re-notify the previously secured creditors. Section 9-324 of the Uniform Commercial Code outlines the requirements to establish priority in inventory.

It states that the secured party must send notification to the holders of any conflicting security interests, and that the holders of these conflicting security interests receive the notification within five years before the debtor receives possession of the inventory. This means in order to maintain priority upon continuation, all previously secured parties will again need to be notified. Failing to do so will jeopardize your priority position in your goods.

Make sure you are searching and notifying when you continue your PMSI UCC Filings

Tip 16: Protect Your Inventory with Warehouse Filings

Are you storing your inventory in a third-party warehouse?

If so, you should file a UCC-1 Financing Statement to publicly announce your ownership. Under Article 7 of The Uniform Commercial Code, the warehouseman may have a lien against your inventory.

If the warehouseman's business were to fail, their bank may unknowingly liquidate your inventory. Filing a UCC-1 Financing Statement will let everyone know who the inventory belongs to and keep your interest safe.

Tip 17: When Selling on Consignment, Review the Secured Transactions Provision

If you are selling under consignment you may want to review the secured transaction provisions. Consignment now falls under Revised Article 9. To have priority rights over a previous secured interest, the consignor must now comply with the same rules that apply to a Purchase Money Security Interest in inventory.

This means, if you are selling under consignment, you must get a consignment agreement signed; file a financing statement; and search and notify all previously secured creditors. If you do not, you risk losing your inventory to previously secured creditors.

Tip 18: When to File a Fixture Filing

A fixture is defined as goods that have become so related to real property that an interest in them arises under real property law (Article 9-102[41]). A few examples are gas/fuel pumps, ovens, and external signs. If your UCC Security Agreement calls out “fixtures,” you should consider filing a UCC Fixture.

The Fixture filing will be filed at the county level against the real estate and will appear on a title search. This will alert potential buyers/sellers that the debt needs to be paid before the title of the property can be transferred.

Tip 19: Conduct a Reflective Search After Every UCC Filing

Often, we take for granted when a UCC is instantly recorded online that all is well. But how do you know your filing will appear in a UCC-11 search?

Each Secretary of State office has their own software to house UCC filings that sometimes can be unreliable or outdated. The only way to determine if your UCC filing is indexed correctly is to conduct a Reflective Search. If that Reflective Search does not display the filing, you have a problem.

Tip 20: Your UCC Filing & Customer Default

If your customer has defaulted on payment(s) and you have filed a Purchase Money Security Interest (PMSI) UCC, you need to determine whether you would like your equipment/inventory (aka goods) back.

- If you do not want your goods back, you can place your claim with an attorney to file suit. By filing suit, you may receive Judgment, which allows you to garnish accounts and/or attach to assets.
- If you do want your goods back, and your customer has the goods, you have the right to repossess without disturbing the peace.
- If you are unable to peacefully repossess the inventory/equipment, you could take legal action by filing a temporary restraining order or by filing suit against your debtor.

Notice & Mechanic's Lien Services

Tip 21: No Notice Required? Serve a Non-Statutory Notice

There are instances where a preliminary notice isn't required. As a best practice, serve a non-statutory notice. A non-statutory notice is a notification to an owner that its land has been or will be improved by the goods or services supplied.

Often, the owner of a property is unaware that a supplier has provided value to a property or project until the notice is served. View the notice as a courtesy to the owner, advising of your involvement in providing quality products and services to the project.

Tip 22: First Furnishing, Last Furnishing, and Completion

Furnishing dates most often dictate the notice, lien/bond claim, and suit deadlines. First Furnishing is the date on which the claimant first provides materials or performs services on a project. Here are some typical examples of first furnishing:

- if you are providing only materials, the date the materials first arrive on the job site
- if you are providing only labor to the project, the date you first arrive on location
- if you are providing materials and labor to the project, the first date either materials or labor are provided to the job site

Last Furnishing is the date on which the claimant last substantially furnishes materials or performs services on a project. Here are some examples of *questionable* last furnishing dates: punch list work, warranty, remediation. The key when using last furnishing to calculate a deadline is that it needs to be substantial.

Completion, which can also affect deadlines, is the date of fulfillment of the prime contract for work of improvement. Completion is typically when the general contract is complete, not necessarily the date your contract is complete. Acceptance is an official act where entry is made in the government records that a public work under contract is completed and accepted.

Tip 23: Understanding Releases and Lien Waivers

When signing any release or waiver for a project, make sure you are only releasing what you intend to release. Points to consider:

- Unconditional or Conditional: does the language within the waiver reflect the title of the release/waiver and does it express your intention? If the waiver is "conditioned" upon receipt of payment, use a conditional waiver form.
- Final or Partial: If additional payments are to be received, a partial waiver form should be used.
- Is the project information correct?
- Are the invoice(s) correctly and clearly identified?
- Is the amount shown in the waiver the amount you received?
- Is the amount shown correct as to the date released and waived through?

The most common mistakes made with releases and waivers are signing a waiver, thinking it is conditional, only to find the language was unconditional, and discovering the date released or waived through includes additional invoices that were not part of the amount paid.

Tip 24: Defining Your Contractual Chain

You're filling out a job information sheet or completing an NCS Service Request form and see spaces for an owner, a prime contractor, a subcontractor. You aren't sure who it is you're selling to. Are you a supplier that 'never' sells to a general contractor? Has your customer ever said, "There isn't a GC on this project," when you ask for job information?

A prime or general contractor is typically described as the party who contracts with the owner and is responsible for day-to-day oversight of a construction project. You might be thinking, "My customer never acts as a general contractor because they aren't responsible for anything else on this job." Generally, what you want to do is look at the complete picture of the contractual chain.

The key is that if your debtor is selling directly to the owner; their contract is "prime" with the owner. Even though your debtor may not be overseeing other aspects of the project, they are working with the owner and should be listed as the prime contractor.

Remember, the prime contractor is the party who contracts with the owner. So, if your debtor is selling directly to the owner, and you must choose who you sold to, the answer is...drum roll please...the Prime Contractor.

Tip 25: Confirm Your Job is Bonded

“What do you mean it’s not bonded – it’s a government job!” Not all government jobs are bonded. Some states have bond thresholds or requirements, but the only sure-fire way to know the job is bonded is to get the bond.

Take some of the guesswork out of your security stance and ask for a copy of the payment bond up front. If the job isn’t bonded, at least you’ll know to investigate alternative security measures at the onset.

Tip 26: Use Public Liens Where Available

A bond claim is probably the most well-known form of security when providing labor and materials on a public works project. However, some states allow for a lien on public funds, which can trap money unpaid from the public entity to the general contractor.

Though this service is often referred to as a Public Improvement Lien, states may call this type of claim something else: Municipal Mechanic’s Lien (NJ), Lien on Funds (NC), or Stop Notice (CA). There are 15 states that allow for a public lien on funds in addition to serving a claim against a payment bond.

Tip 27: Defining Your Contractual Chain

Sovereign land projects can be a challenge when trying to determine the best course of action for security. If a project is located on an Indian Reservation, the mechanic’s lien / bond claim statutes may not apply.

Frequently, a project name or owner name can tip you off as to whether a project is located on tribal land or owned by a tribal authority. A simple owner search via the county assessor may help confirm if the project is considered government land and/or owned by the authority.

In some instances, the tribal authority may require a payment bond; however, this is not public information. We recommend a) proceeding with the statutory Preliminary Notice if applicable or a Non-Statutory Notice of Furnishing and b) having NCS investigate whether the project is bonded.

Tip 28: Don't Wait Until the Last Minute to Lien

Factors like pandemics, inclement weather, county closures, state holidays and the wait times for document recording can cause MAJOR delays in recording. When unforeseen circumstances arise, other methods of service may be required, which can be costly. Timely submission of requests enables cost effective methods of service, ensuring lien rights are protected.

Additionally, statute differs with each state dictating which means of serving a notice is acceptable. While some statutes allow for overnight delivery, other statutes require that documents be sent via certified mail, which slows the delivery time. This can be a crucial factor when the document must be received by the deadline. Again, timely submission will help to ensure your rights.

Tip 29: Full Balance Lien vs. Unpaid Balance Lien

It's important to understand how the difference between a Full Balance and an Unpaid Balance Lien State can affect your lien rights. In a Full Balance Lien State, the lien is generally enforceable for the full amount owed, regardless of payments made by the owner.

An Unpaid Balance Lien State protects the owner from having to pay twice for materials and labor provided to their construction project. When your lien is limited to the unpaid portion of the general contract, it is critical to file the lien as soon as possible, so it is filed prior to the owner paying the prime contractor.

Tip 30: Protect Security when Negotiating a Settlement

With settlements including security and different sources of recovery, it's important to only release the parties you are settling with and only for the amount they are paying. For example, you may have a mechanic's lien on owner XYZ's property for \$10,000.00. Your debtor/customer is ABC. You accept XYZ's offer to settle the lien for \$8,000.00. In the settlement agreement it should state that the mechanic's lien settles for \$8,000.00 and releases XYZ only, allowing you to pursue ABC for the remaining \$2,000.00 balance.

Commercial Credit Management Tips

Steps to Take Now

Economic uncertainty offers many opportunities to improve your competitive position. Here are steps to take right now.



Re-examine your existing credit policies & make your credit granting process more rigorous.



Ensure your operational systems and customer agreements are in place with accurate and complete credit information. This includes researching and verifying your customer's legal business names.



Implement Bankruptcy Monitoring to ensure you are timely notified of any debtor bankruptcy.



If your department has been downsized and resources are limited, contact your credit vendors to obtain and verify credit history, credit scoring, UCC or lien searches.



Prepare Security Agreements, as well as Personal and Corporate Guarantees, which are powerful tools to minimize your risk.



Talk to your trade groups and exchange financial information on mutual customers.

Every credit professional needs a well-planned credit process with a side of reasonable compassion. Keep in mind that how you treat your customers today will reap great benefits tomorrow.

Take a balanced approach and try not to be too aggressive toward a good customer who has recently fallen on hard times. The economy will rebound, and your customer will remember your tempered approach to their situation.

After all, it is both what you do and how you do it that earns a client's loyalty. And a loyal customer is the best hedge to ensure your company's long-term health.

Commercial Credit Management Tips

NCS is Here for You

In today’s tough economy, working with a responsive, flexible strategic partner is critical. As you spend more time each week extinguishing credit fires, having an expert to react quickly when special problems arise can make an immense difference.

Our expertise in UCCs, mechanic’s liens, and commercial collections will help you minimize your risk and improve your profitability, and our investments in the cutting-edge technology found in NCS Online Services, The Job App, LienFinder, The National Lien Digest, and LienTracker Online will save you time.





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