



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

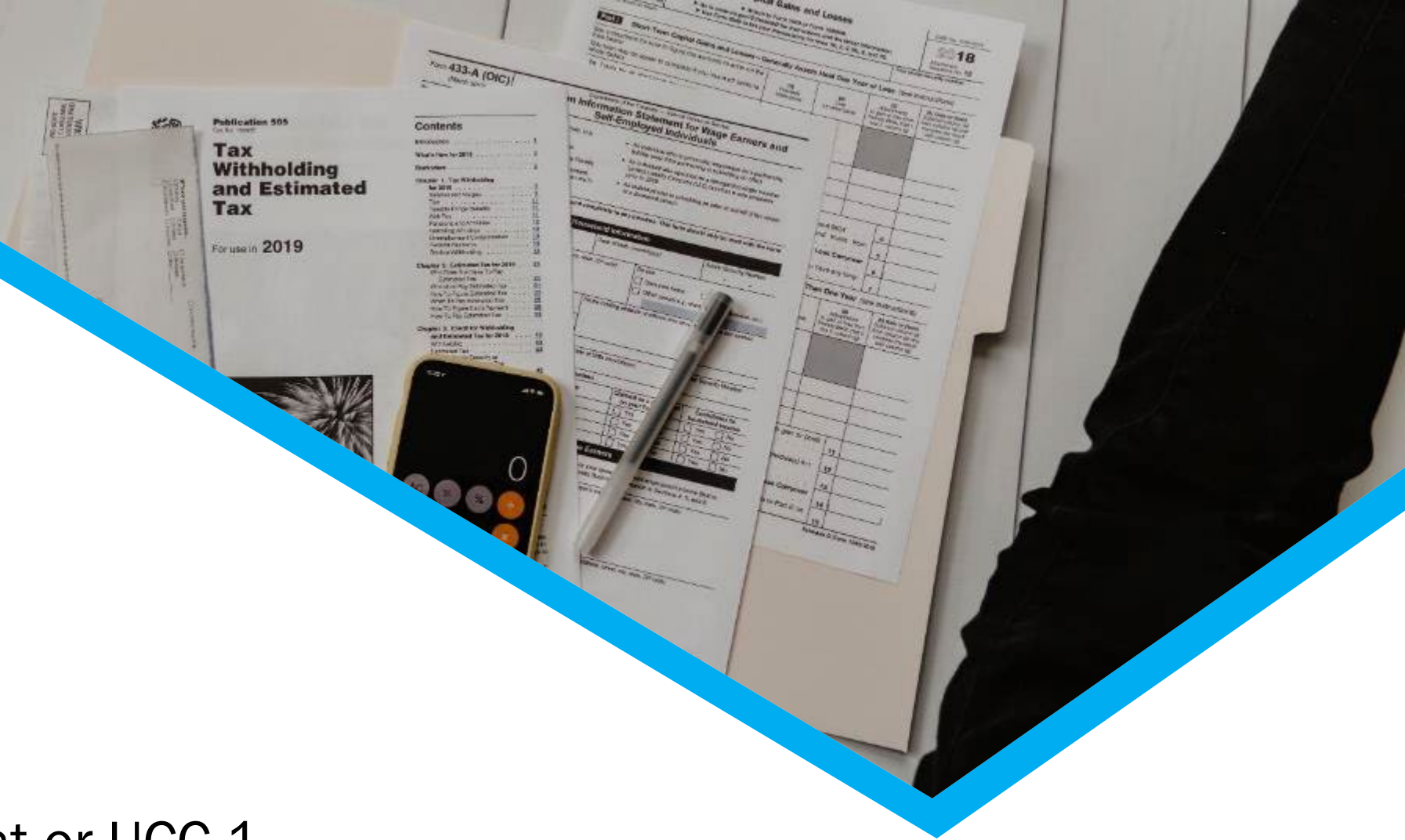
- Declare the debtor in default of the terms of their security agreement
- Advise them they must cease and desist selling the inventory or using the equipment
- Set a cure period
- Inform debtor if payment isn't made by the cure period secured party will begin repossession proceedings
- Set a date and 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~~ ten (15) 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:

- ~~misrepresentation:~~ 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....

SECURITY AGREEMENT

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

Credit Application Security Agreement



NCS
CREDIT

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

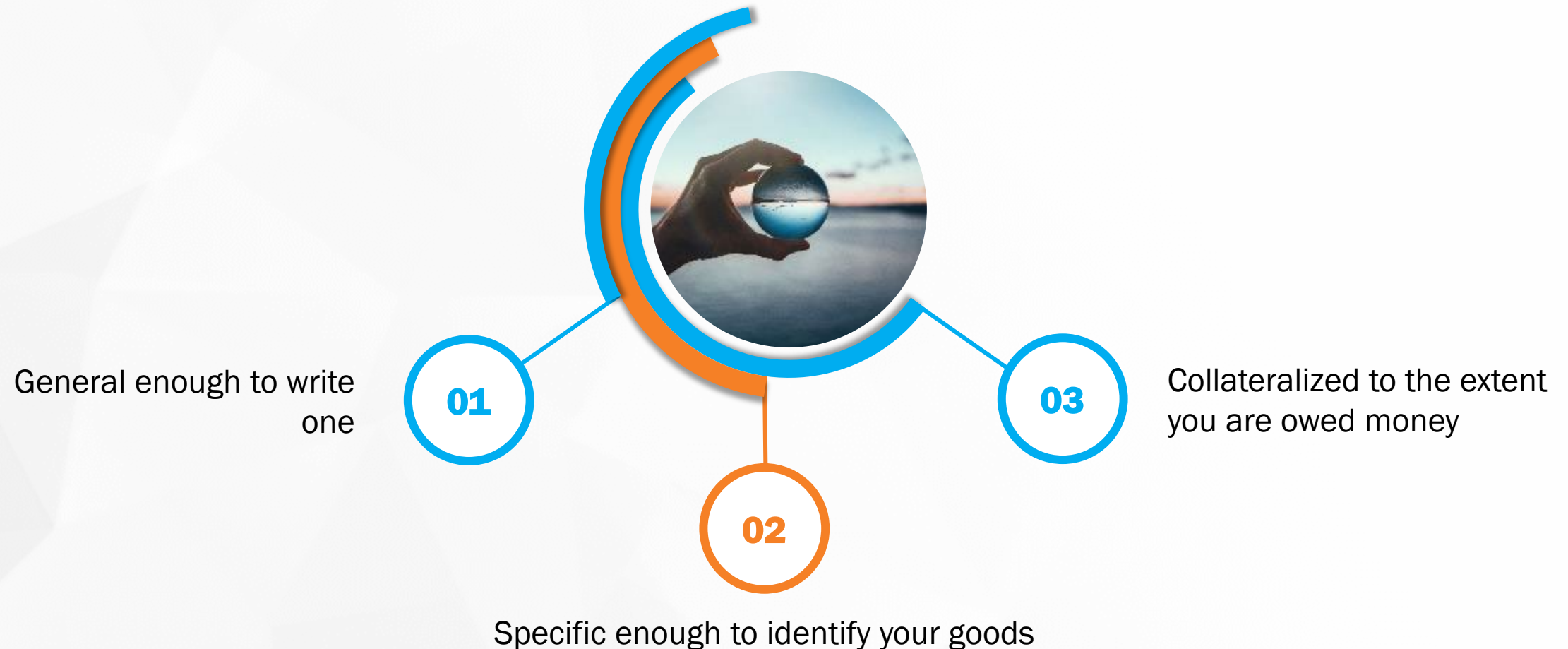
- Payment intangibles
- Software

Collateral

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



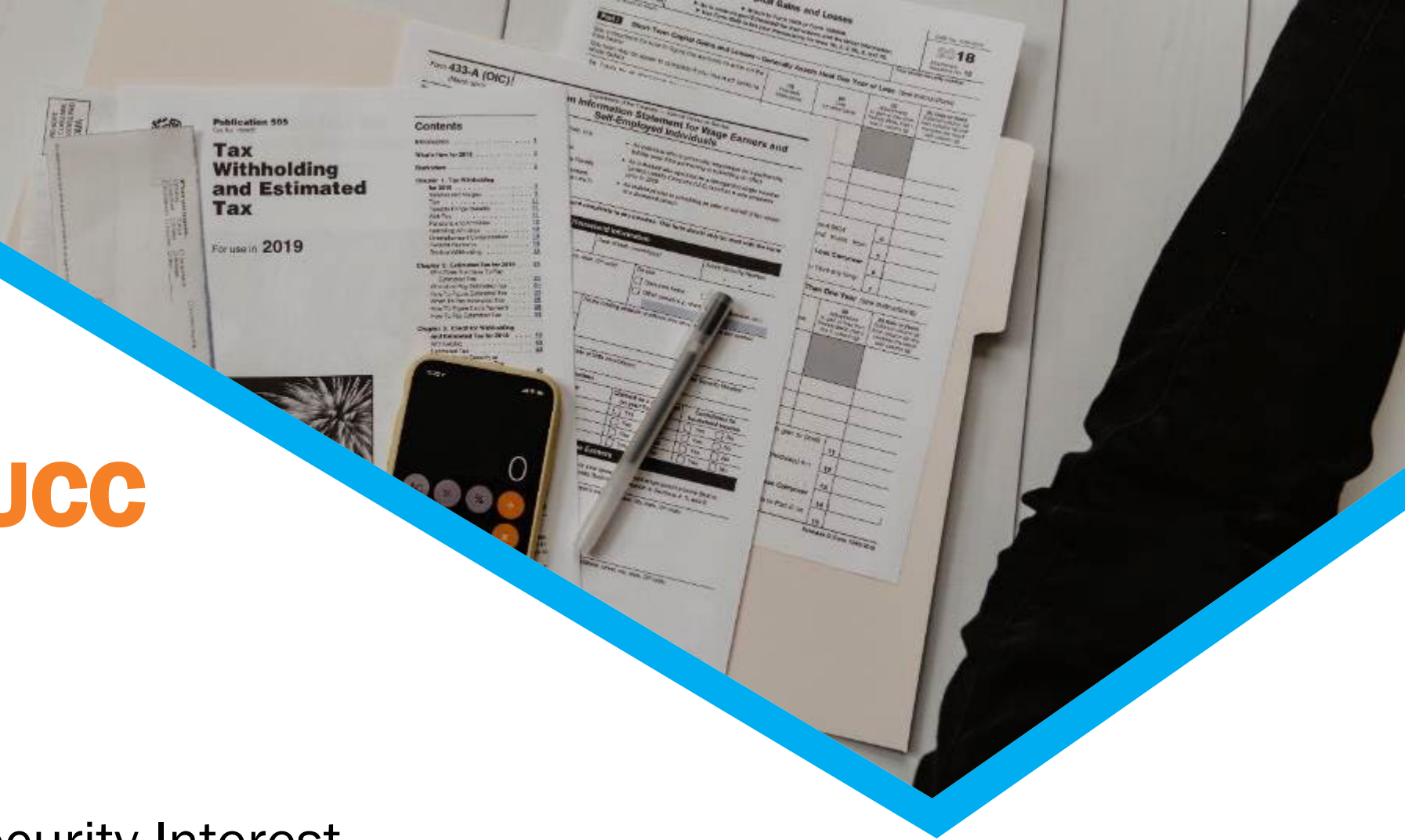
Three Goals of a Collateral Description





Two Types of UCC Filings

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



Blanket, or Basic, UCC-1 Filing

- A security interest covering nearly all types of collateral owned by the debtor.

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (Read and Make Carefully)

A. NAME & PHONE OF CONTACT AT FILER (optional)
(440) 481-9981 sales@ncscredit.com

B. SEND ACKNOWLEDGMENT 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 only legal debtor name (its or her) - do not abbreviate or combine names
a. ORGANIZATION'S NAME
OR
b. INDIVIDUAL'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 legal debtor name (its or her) - do not abbreviate or combine names
a. ORGANIZATION'S NAME
OR
b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME - use name of TOTAL ASSIGNOR of ASSIGNOR'S SUFF - use only legal secured party name (its or her)
a. ORGANIZATION'S NAME
OR
b. INDIVIDUAL'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. STATEMENT OF EXEMPTION FROM FILING (optional)
a. EXEMPTION FROM FILING (optional) b. EXEMPTION FROM FILING (optional) c. EXEMPTION FROM FILING (optional) d. EXEMPTION FROM FILING (optional) e. EXEMPTION FROM FILING (optional) f. EXEMPTION FROM FILING (optional) g. EXEMPTION FROM FILING (optional) h. EXEMPTION FROM FILING (optional) i. EXEMPTION FROM FILING (optional) j. EXEMPTION FROM FILING (optional) k. EXEMPTION FROM FILING (optional) l. EXEMPTION FROM FILING (optional) m. EXEMPTION FROM FILING (optional) n. EXEMPTION FROM FILING (optional) o. EXEMPTION FROM FILING (optional) p. EXEMPTION FROM FILING (optional) q. EXEMPTION FROM FILING (optional) r. EXEMPTION FROM FILING (optional) s. EXEMPTION FROM FILING (optional) t. EXEMPTION FROM FILING (optional) u. EXEMPTION FROM FILING (optional) v. EXEMPTION FROM FILING (optional) w. EXEMPTION FROM FILING (optional) x. EXEMPTION FROM FILING (optional) y. EXEMPTION FROM FILING (optional) z. EXEMPTION FROM FILING (optional)

6. OPTIONAL FILER REFERENCE DATA

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

Blanket, or Basic, UCC-1 Filing

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.

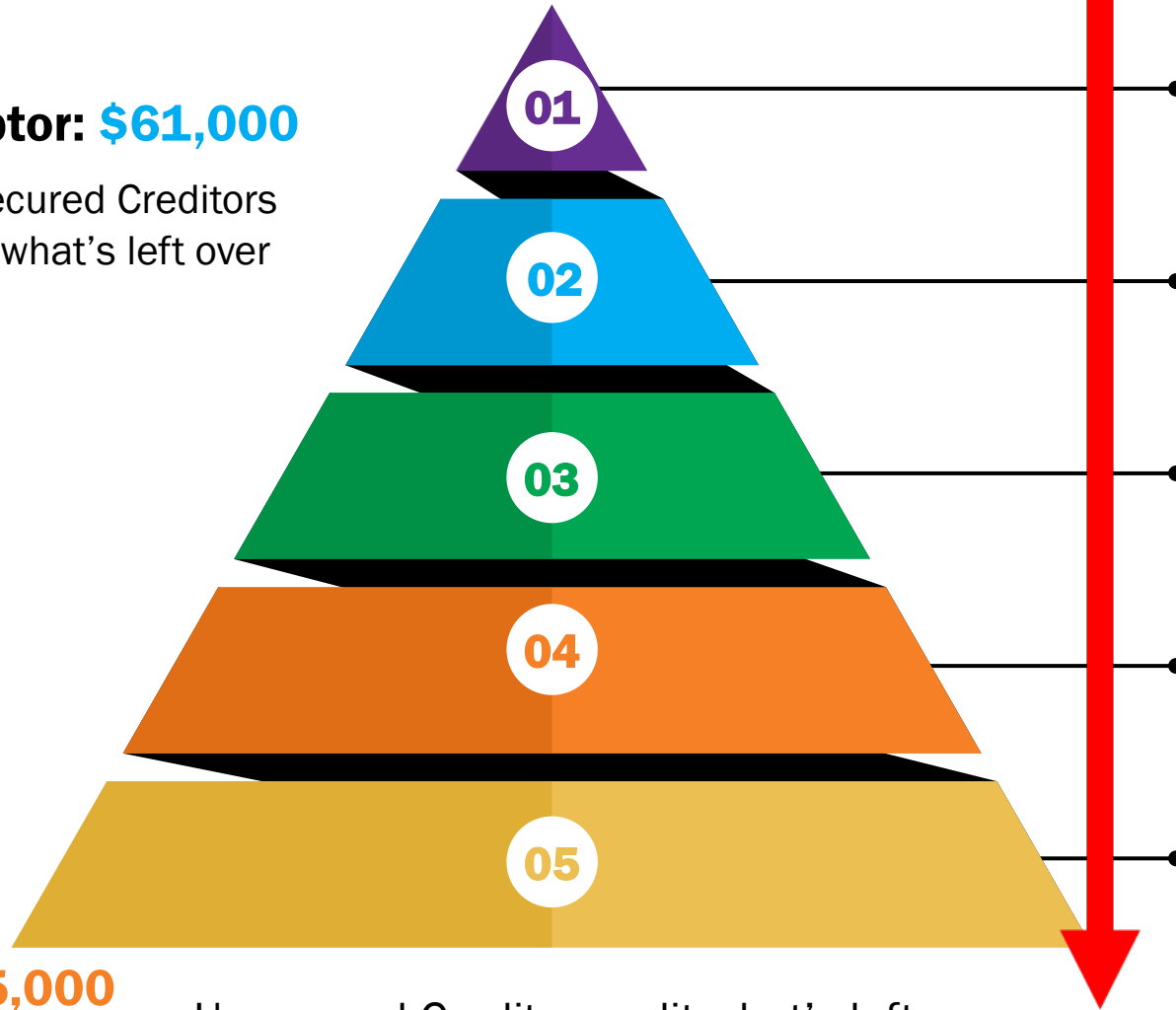


Debtor: \$61,000

Unsecured Creditors
split what's left over

\$55,000

Unsecured Creditors split what's left over



Bank
100%, \$20,000

2nd Creditor
100%, \$10,000

3rd Creditor
100%, \$10,000

4th Creditor
100%, \$5,000

5th Creditor
100%, \$10,000

First in time, first in right

Secured Creditors

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

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Purchase Money Security Interest

Two Characteristics:

01

Creditor finances goods

02

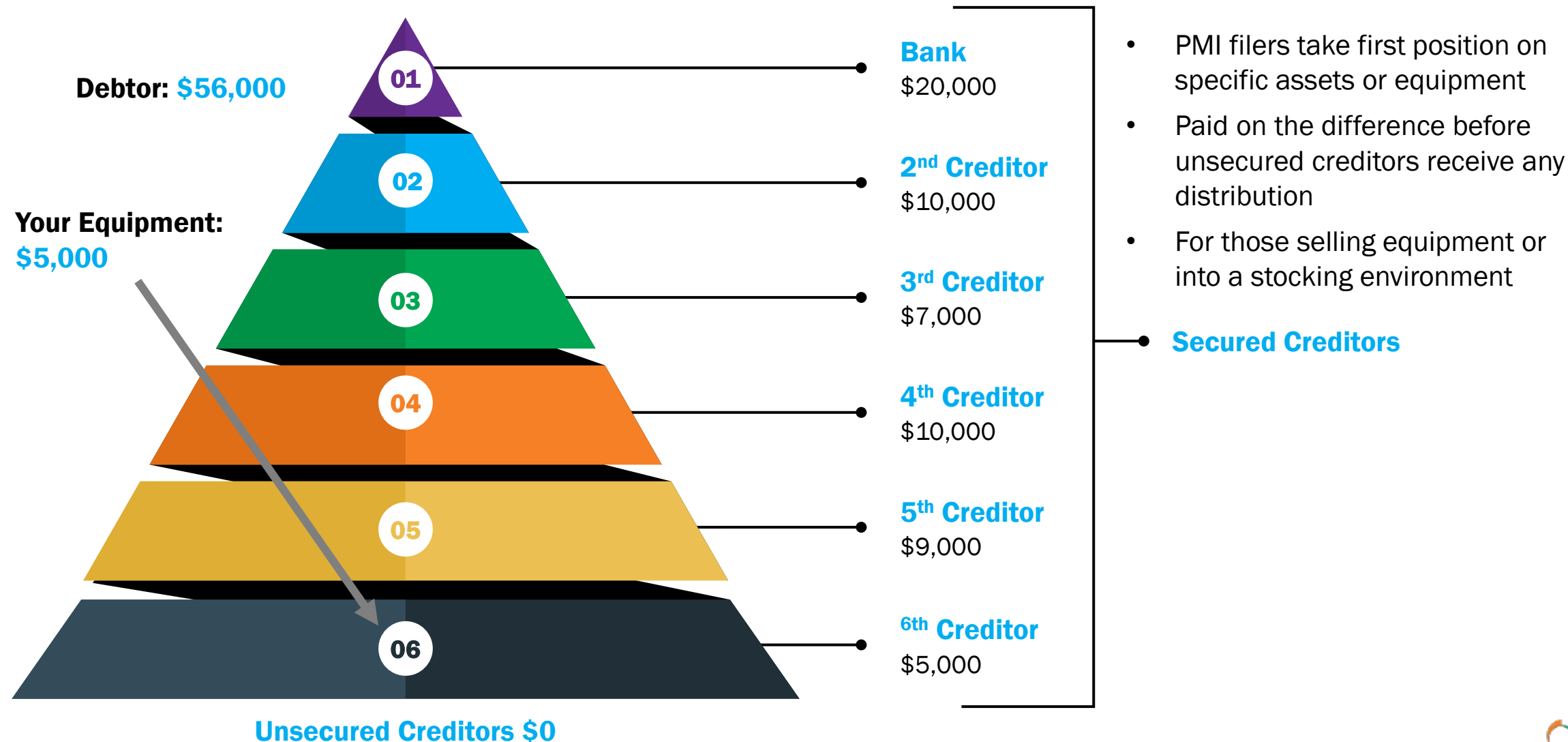
There is value in
repossessing those goods

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.

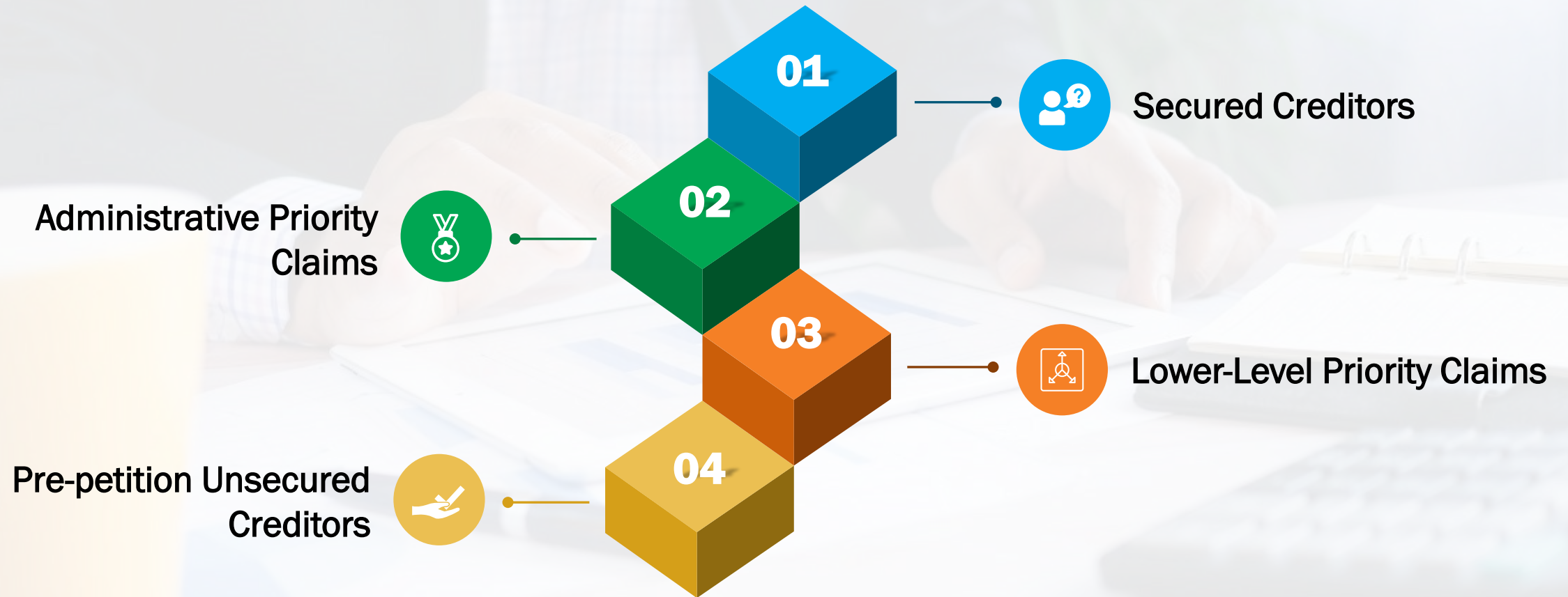


Purchase Money UCC Filings Chapter 7



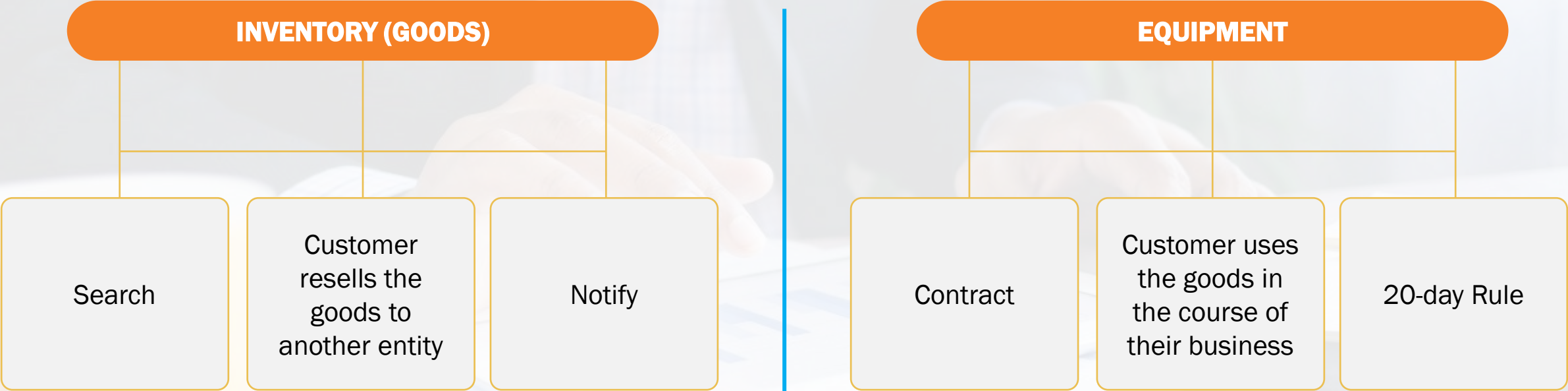
Priority in UCC Filings

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

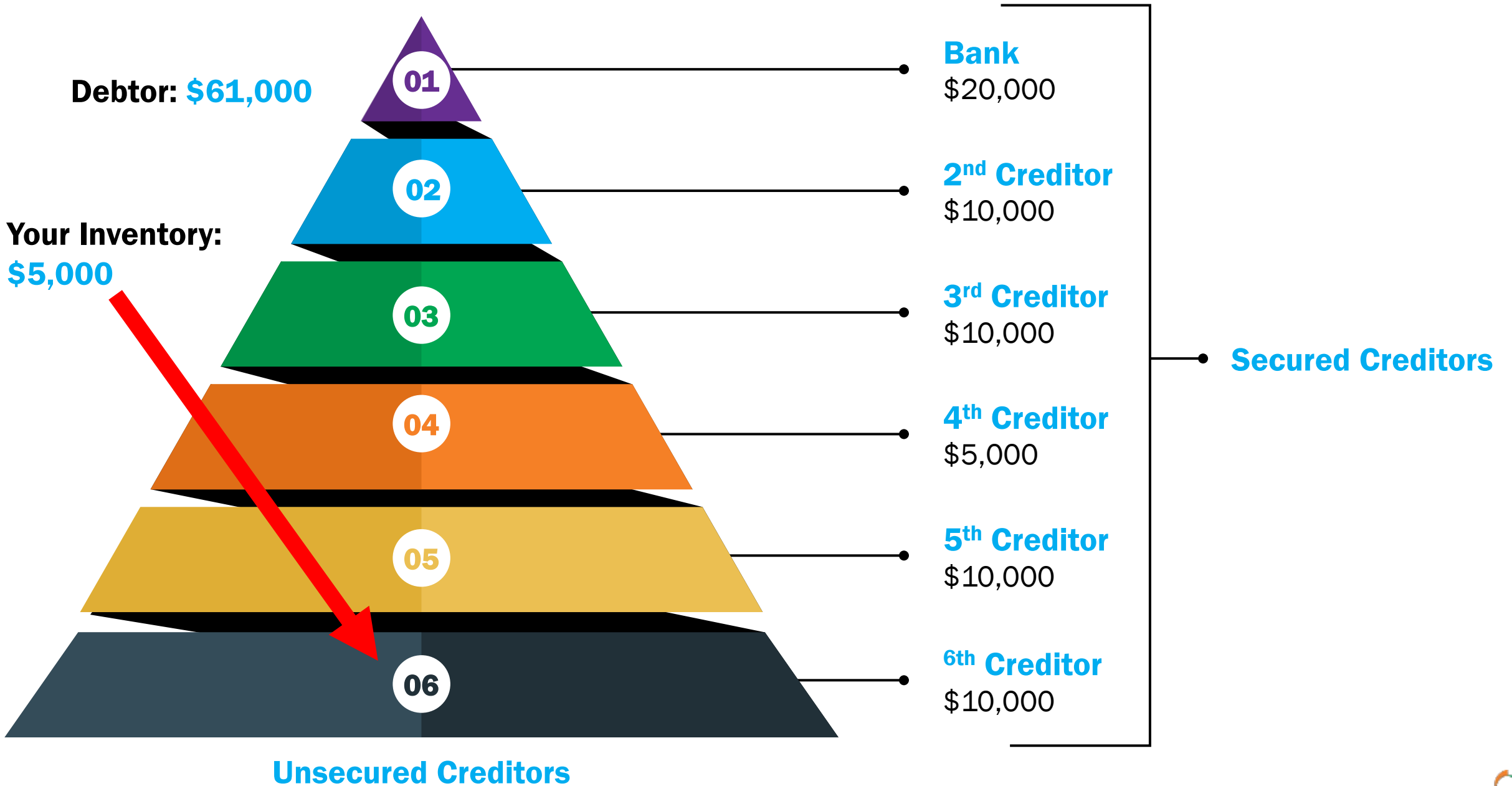


Inventory vs. Equipment

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.

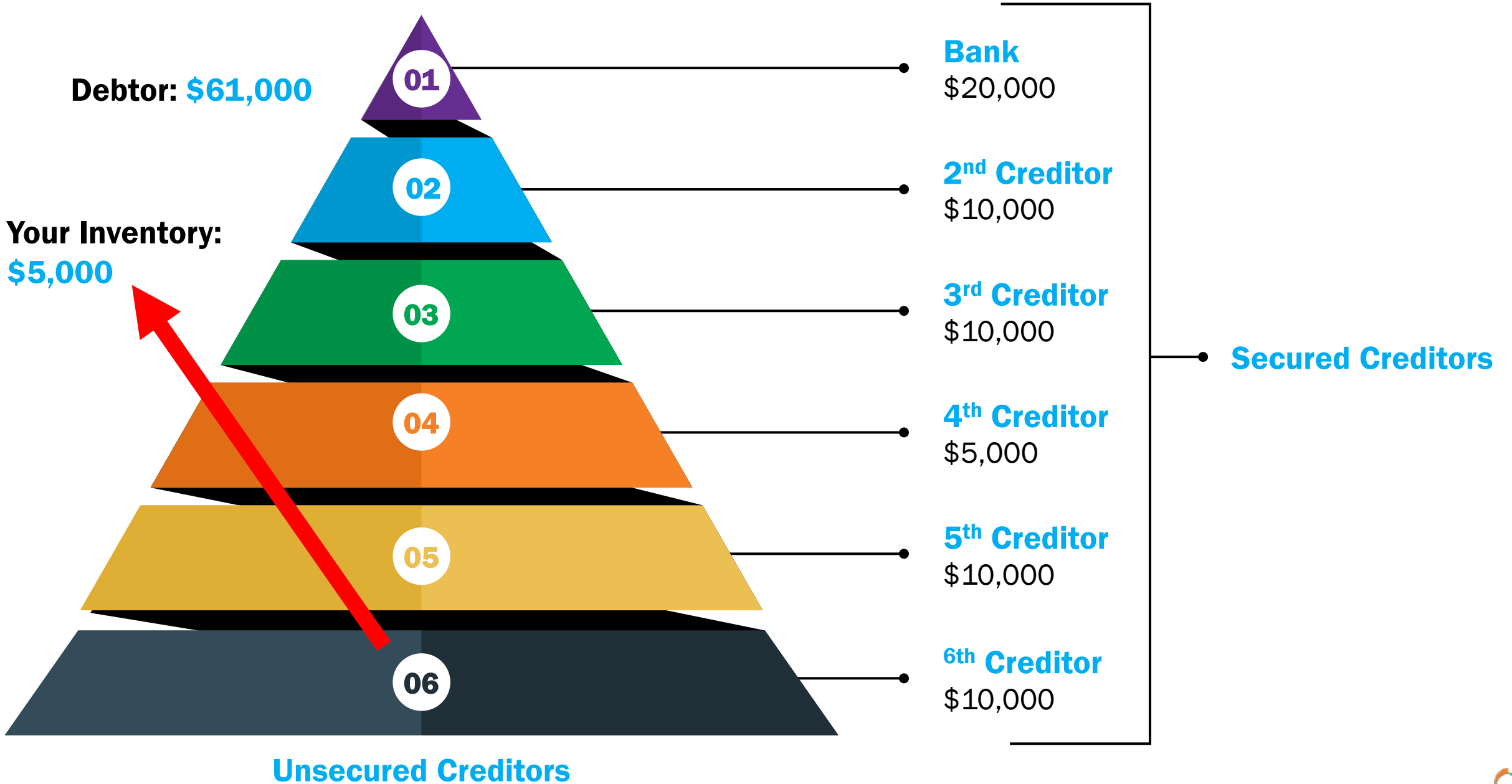


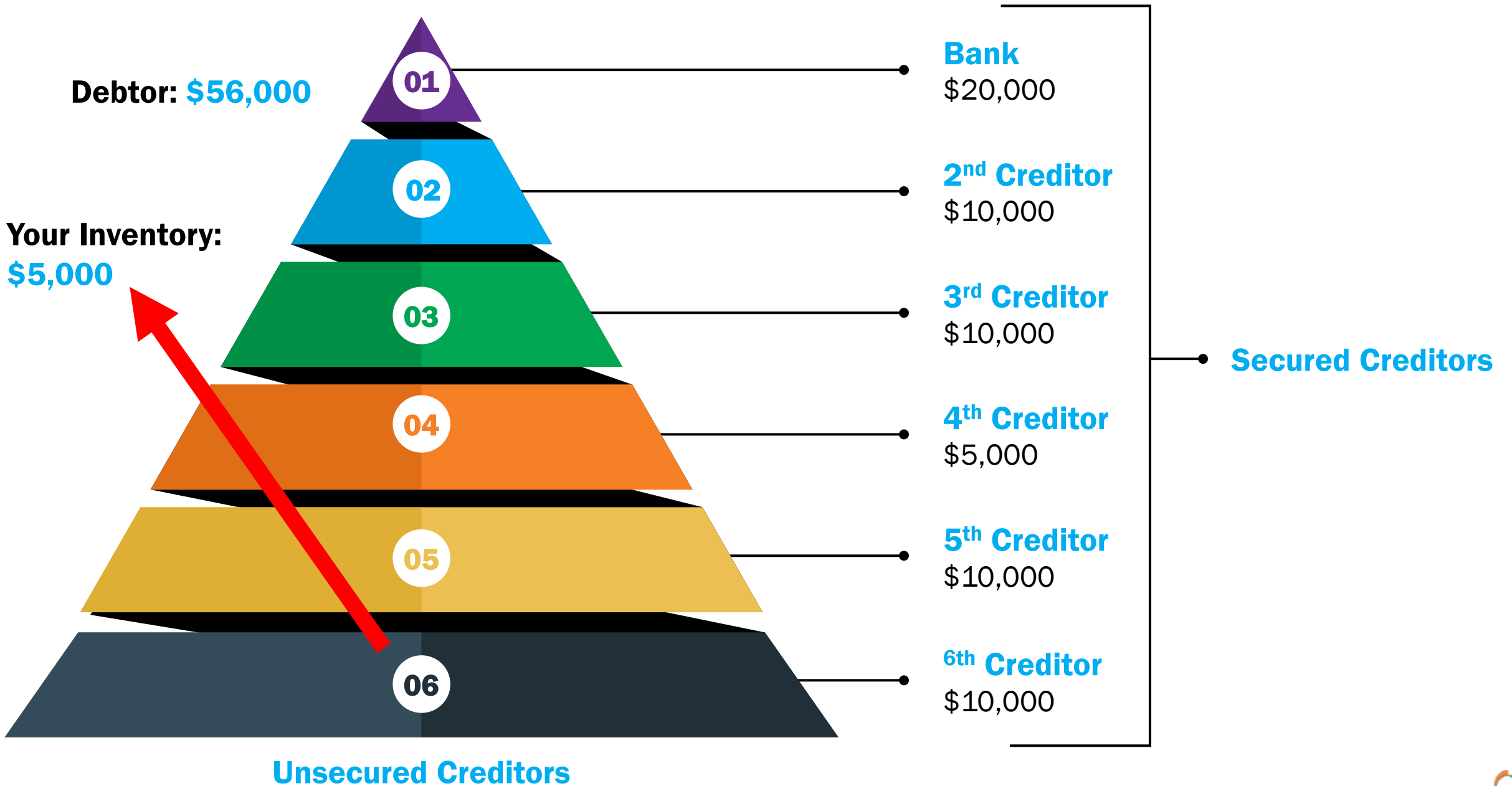


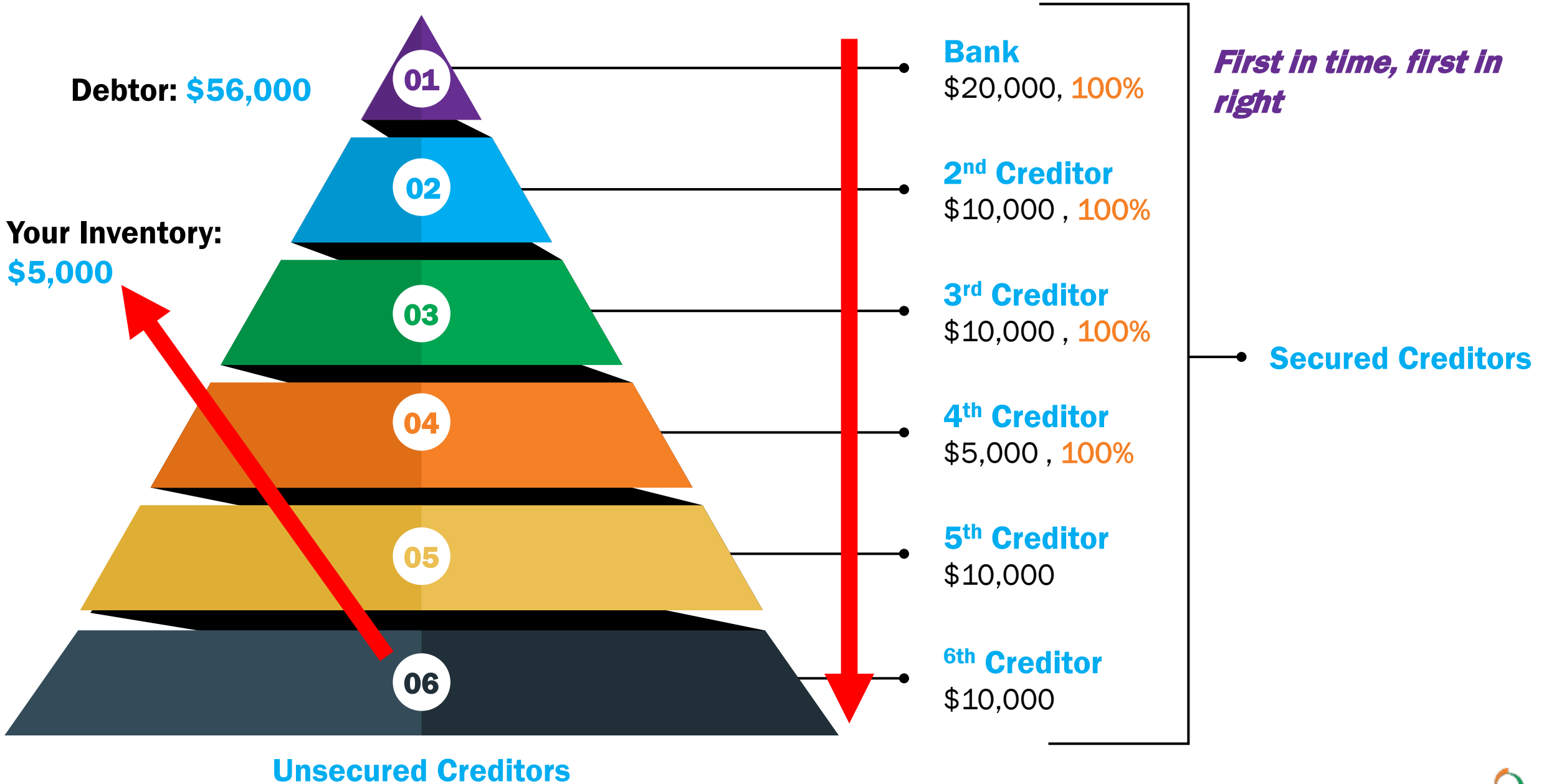
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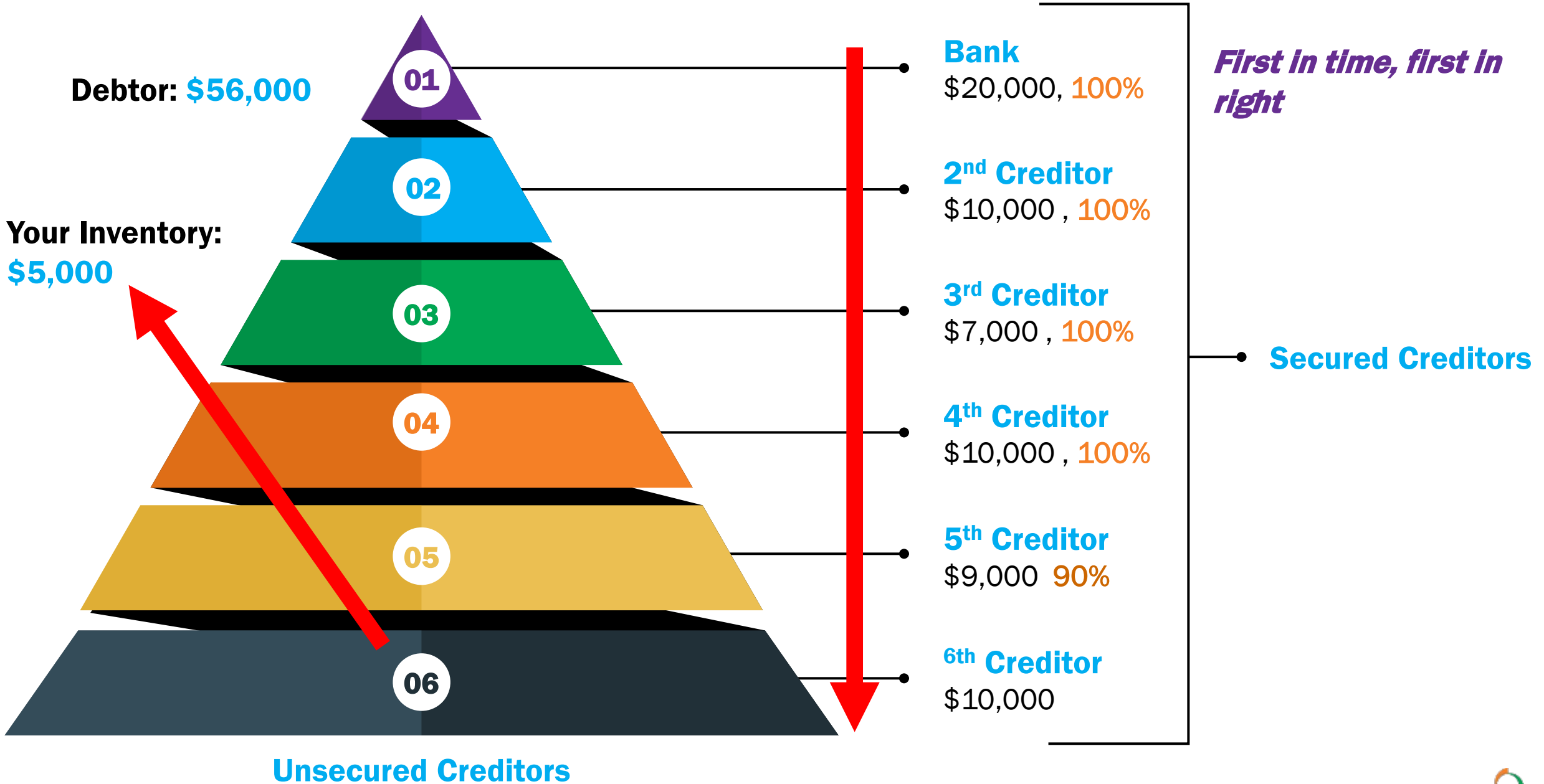
Chapter 7

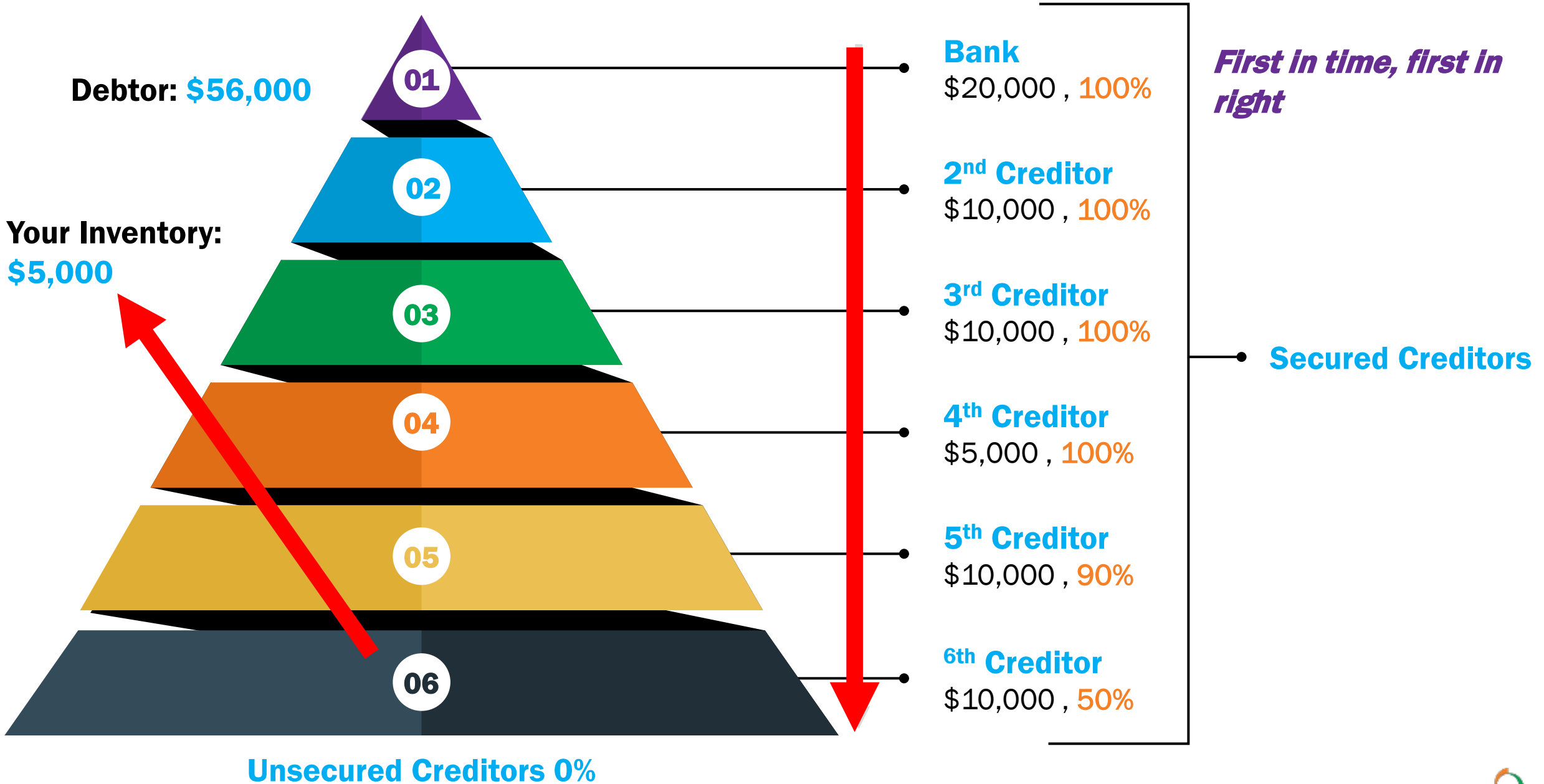
Bankruptcy



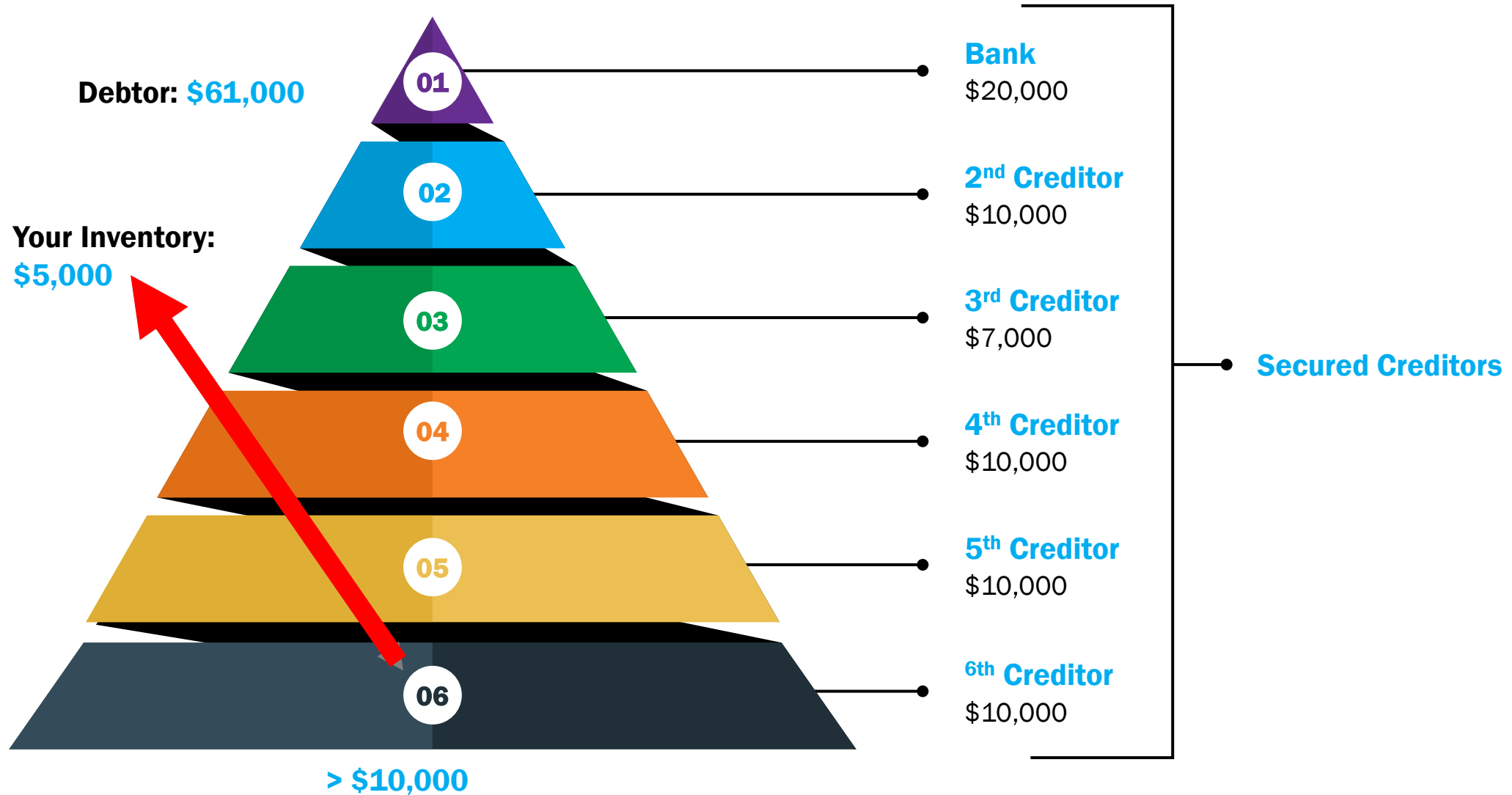




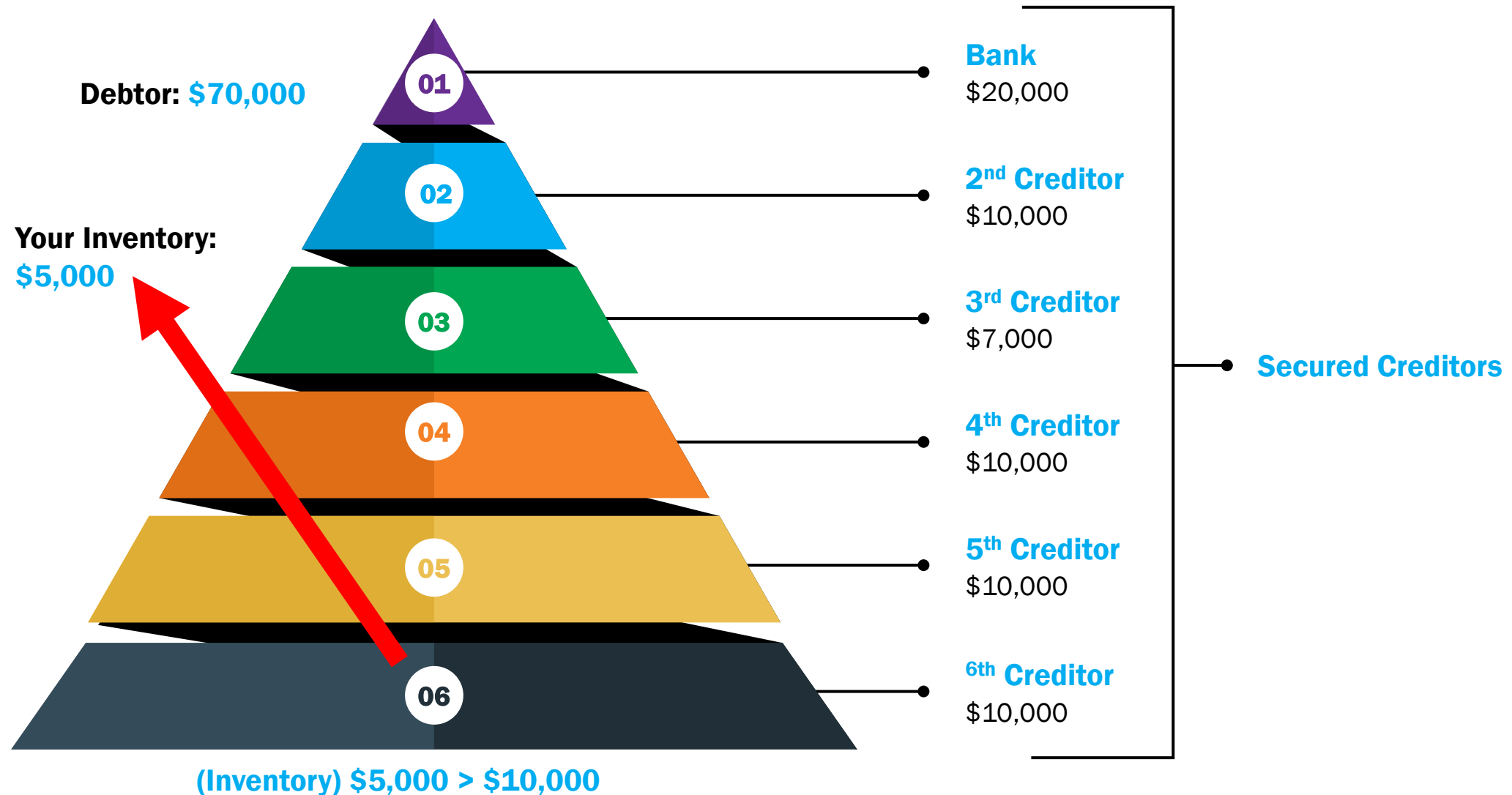




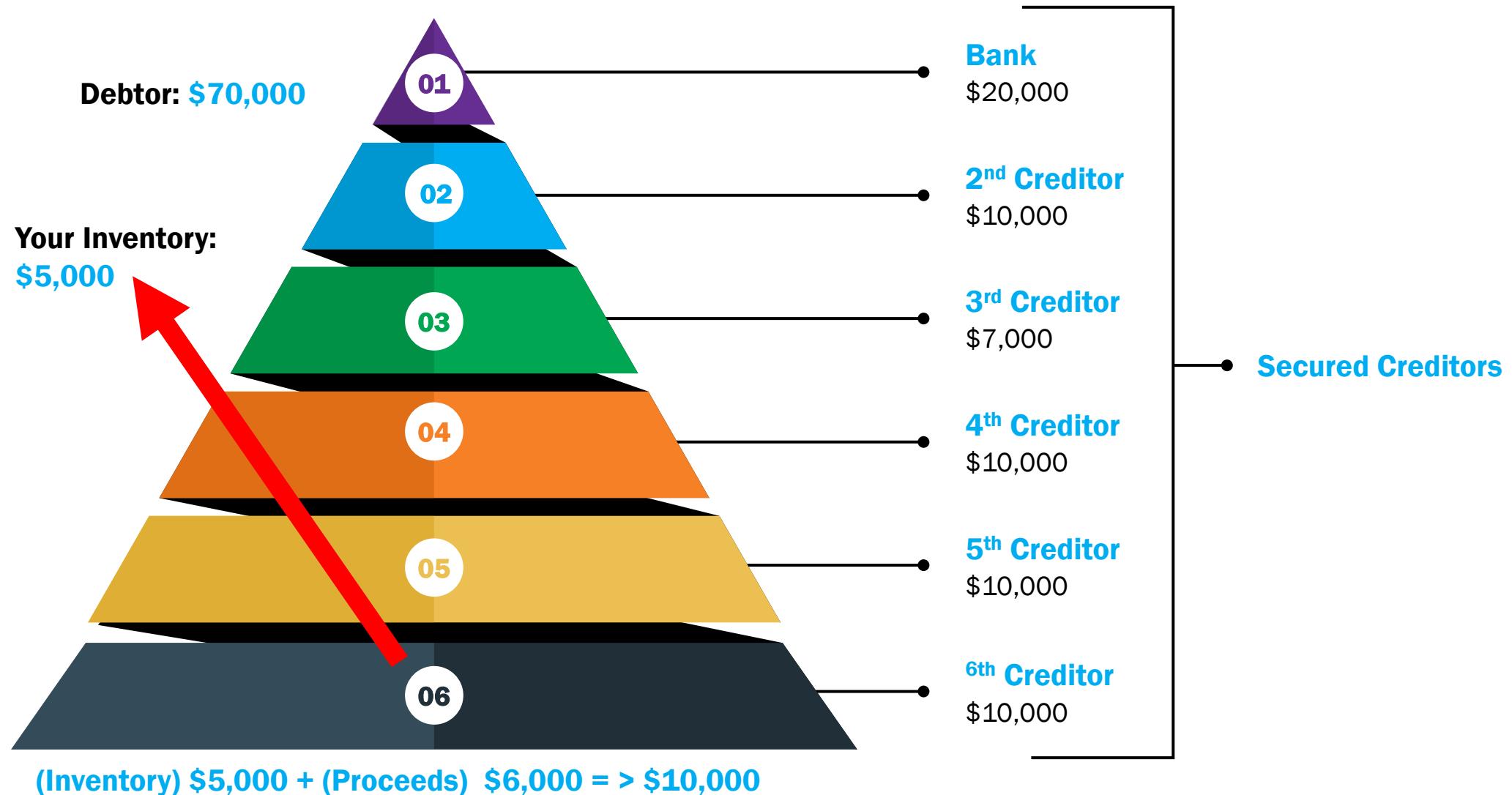
Collateralized to the extent you are owed money



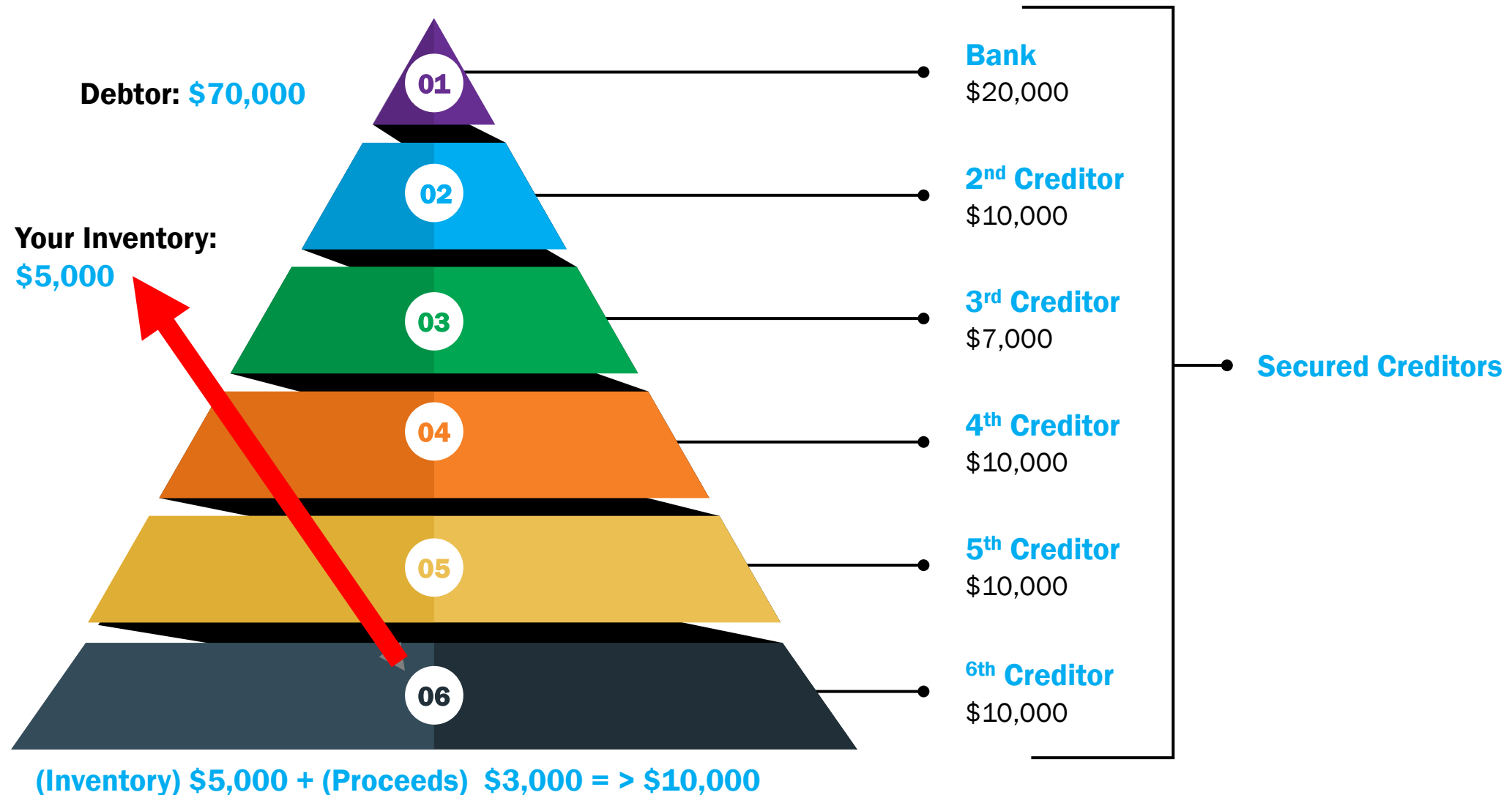
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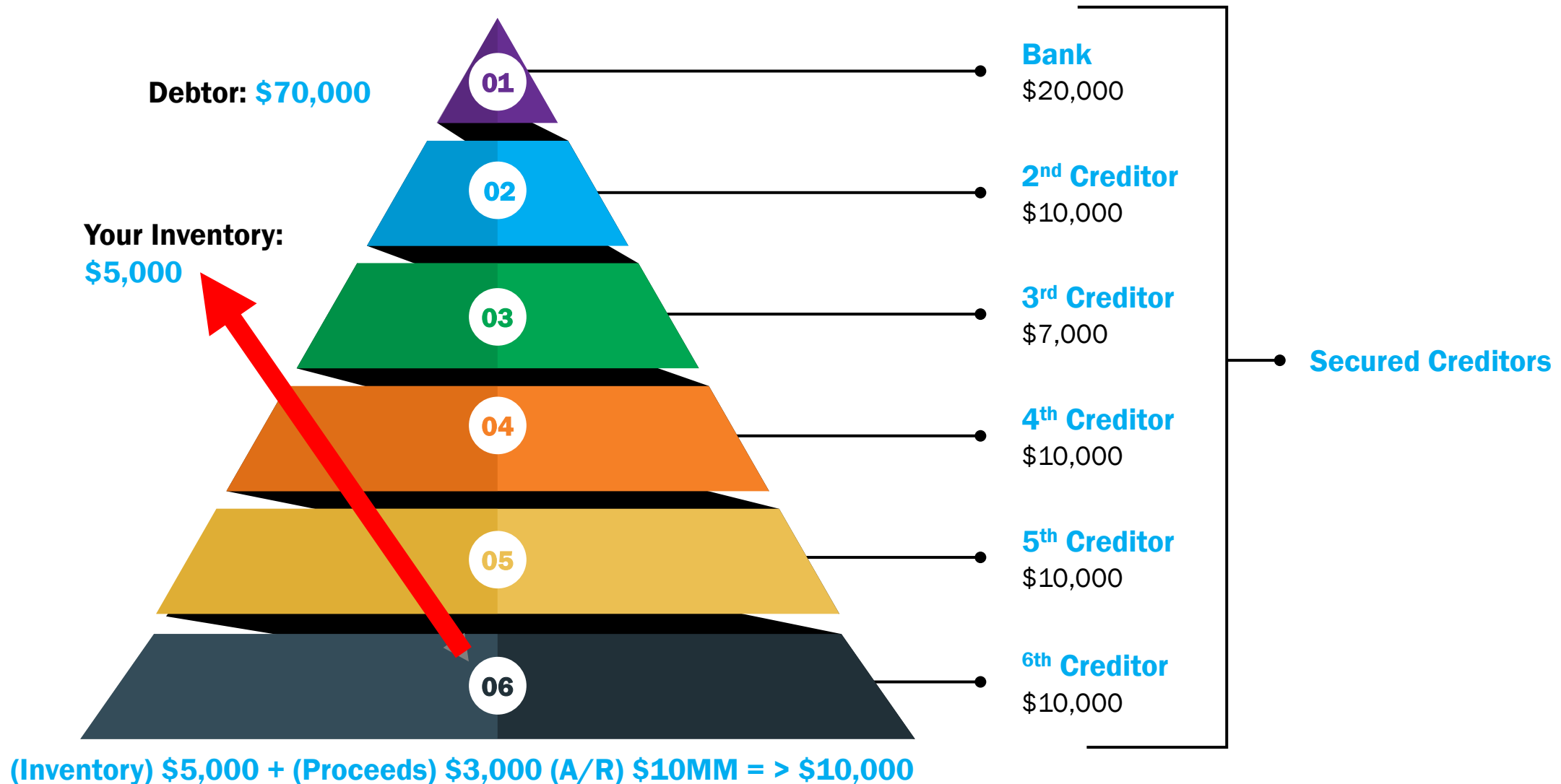
Collateralized to the extent you are owed money



Collateralized to the extent you are owed money



Collateralized to the extent you are owed money



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

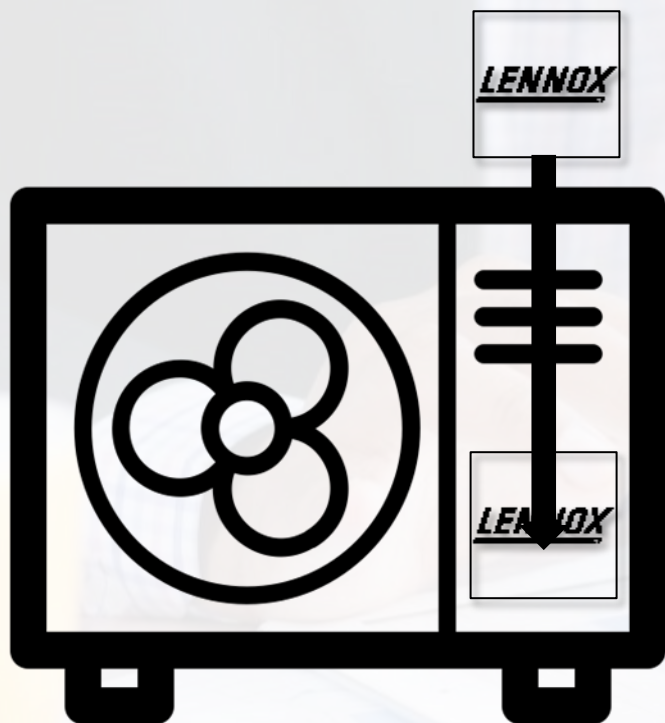




PMSI: The Value of Repossession

1. Resale
2. Differentiating your receivables

PMSI – The Value of Repossession

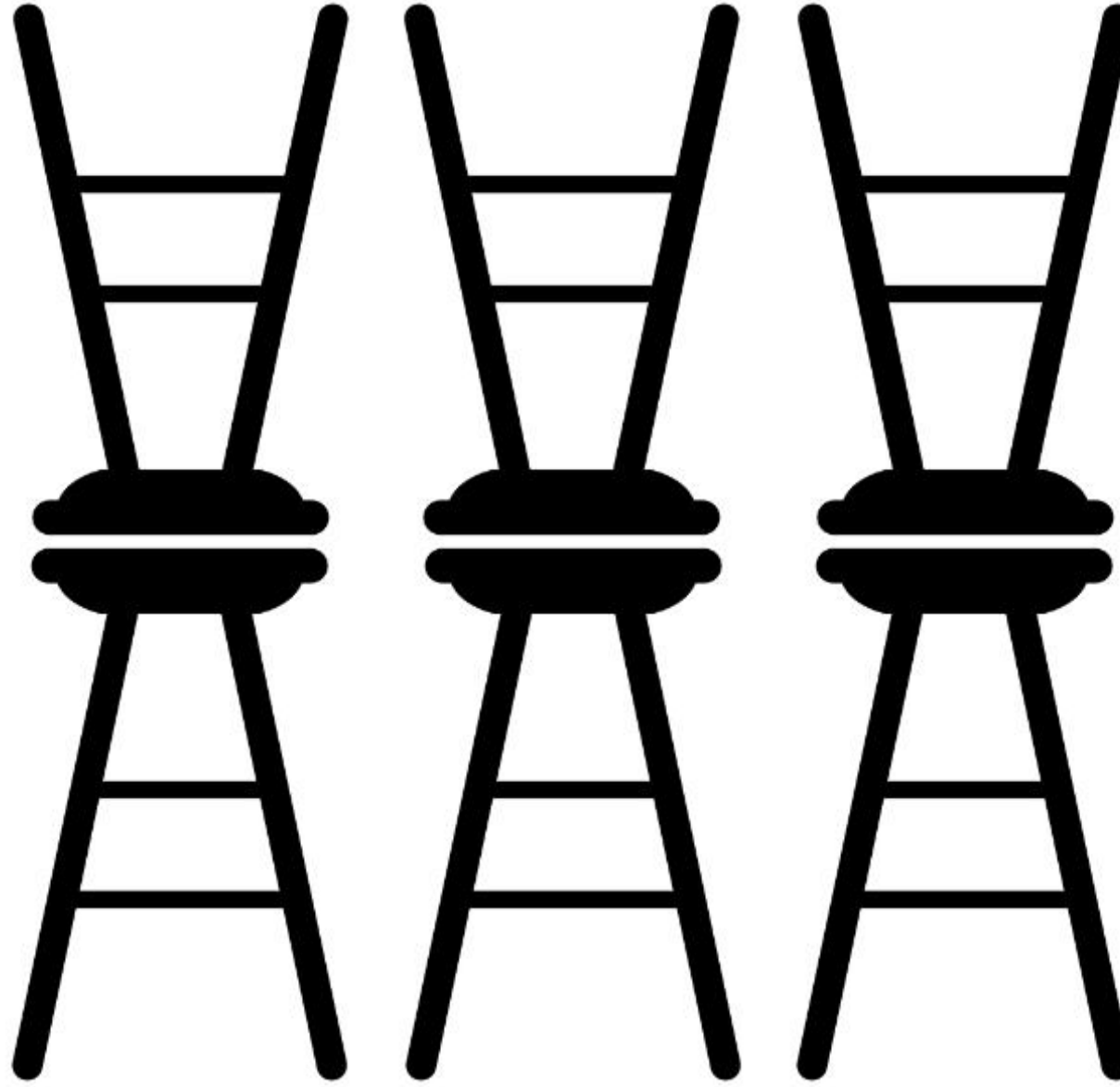


ServiceInterruptis







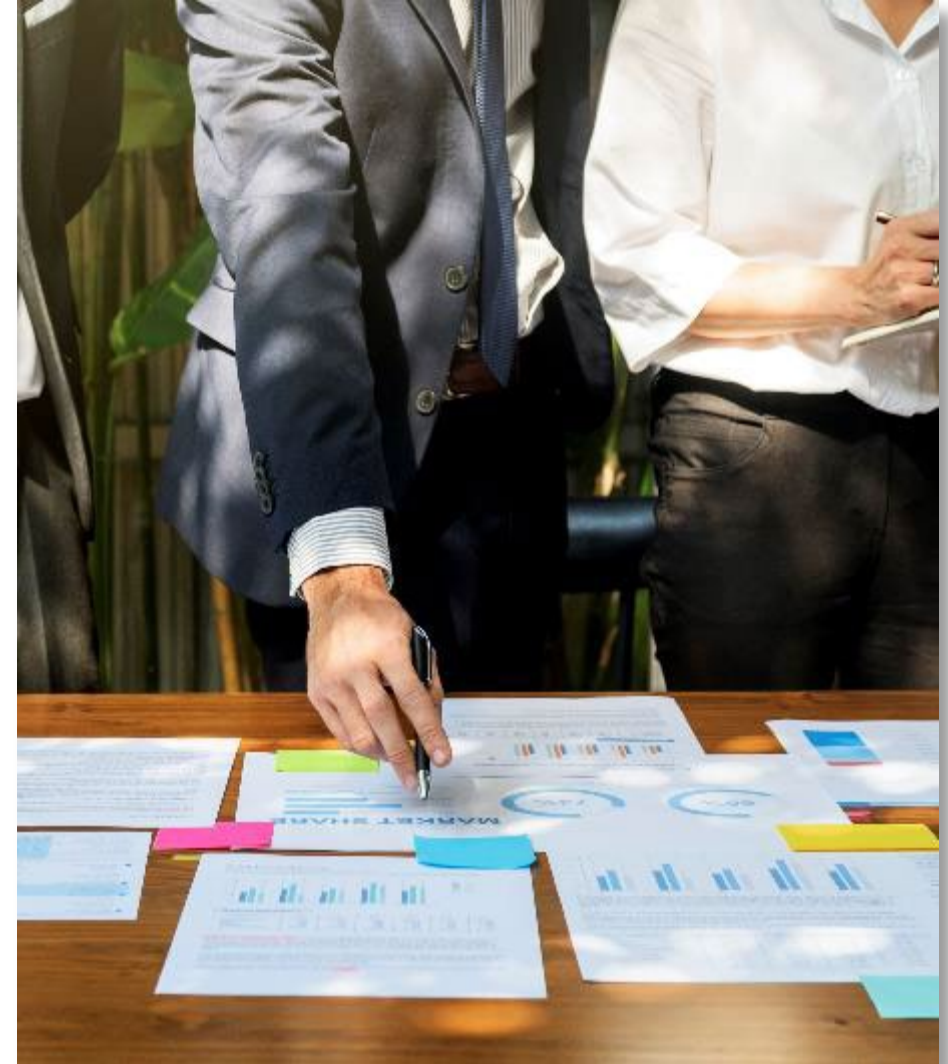


Disposition of Tangible Collateral

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

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

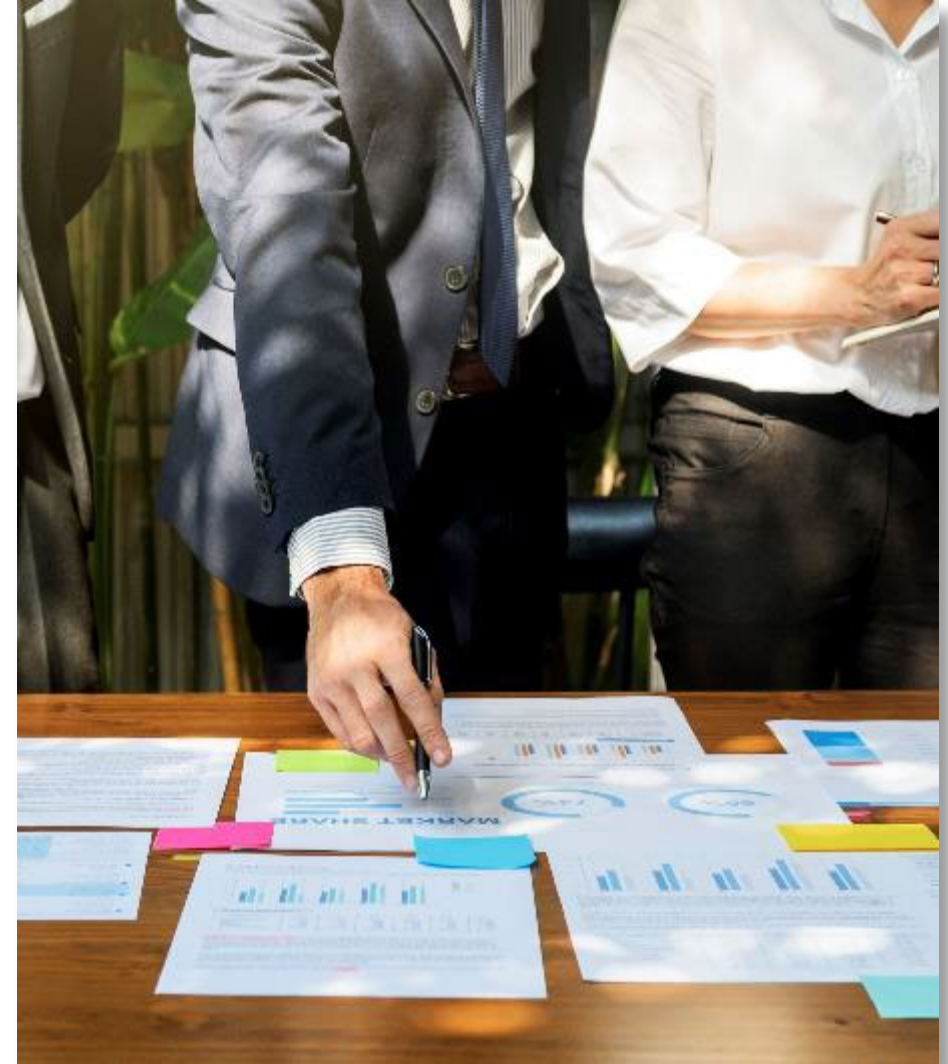
- Voluntary or legal
- May proceed without judicial process
- May not breach the peace
- Recovery through stealth or deception is permitted!



Disposition of Tangible Collateral

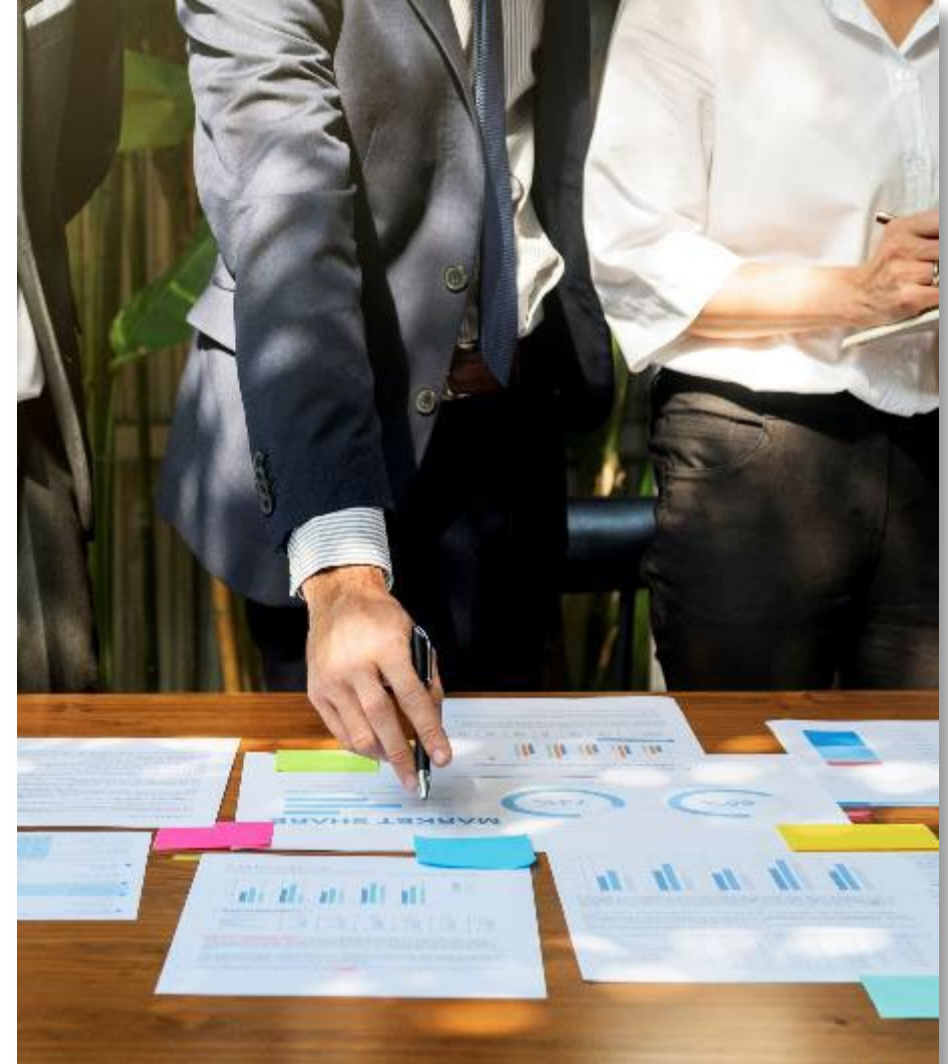
(1) A secured party may sell, lease or otherwise dispose of any or all of the collateral in its:

- 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:



Types of Disposition of Collateral



01

Public or Private
Proceedings

02

In Units, Parcels or
Entirety

03

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



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



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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

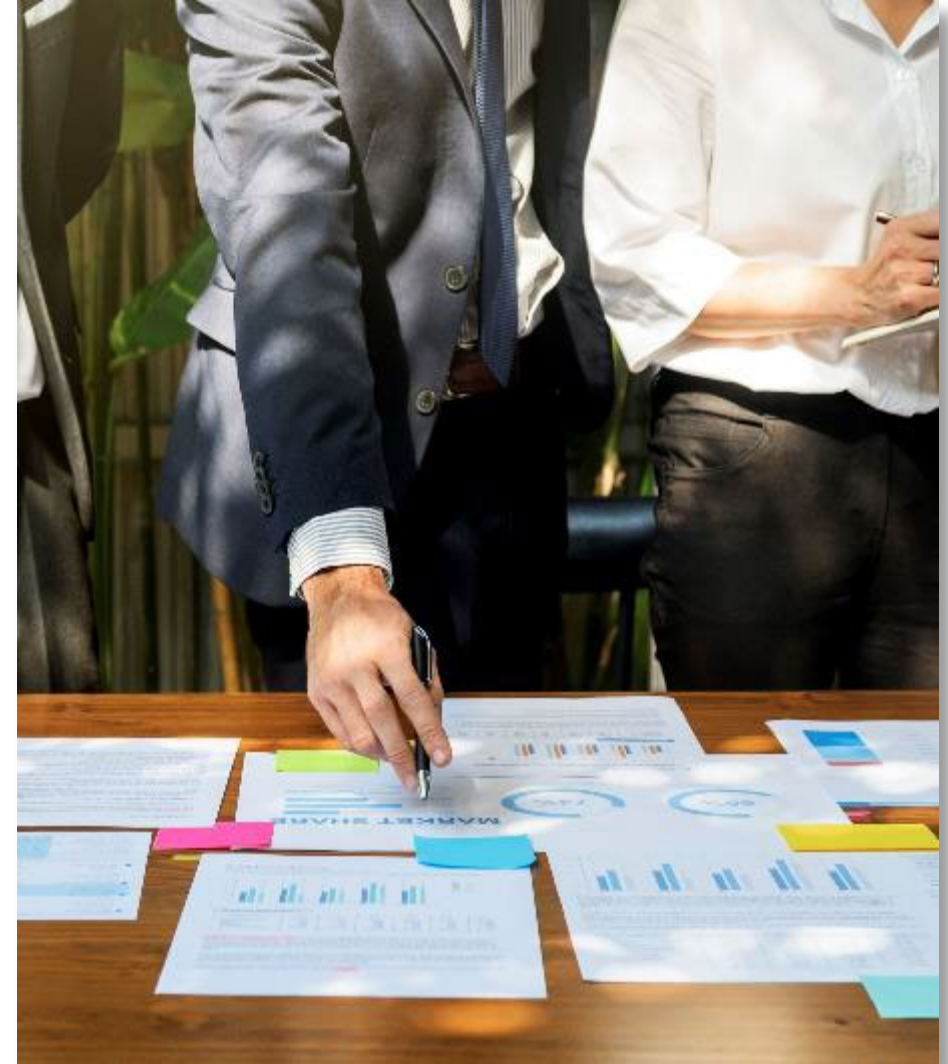
The authorization can be either be explicit or implicit



Disposition of Intangible Collateral

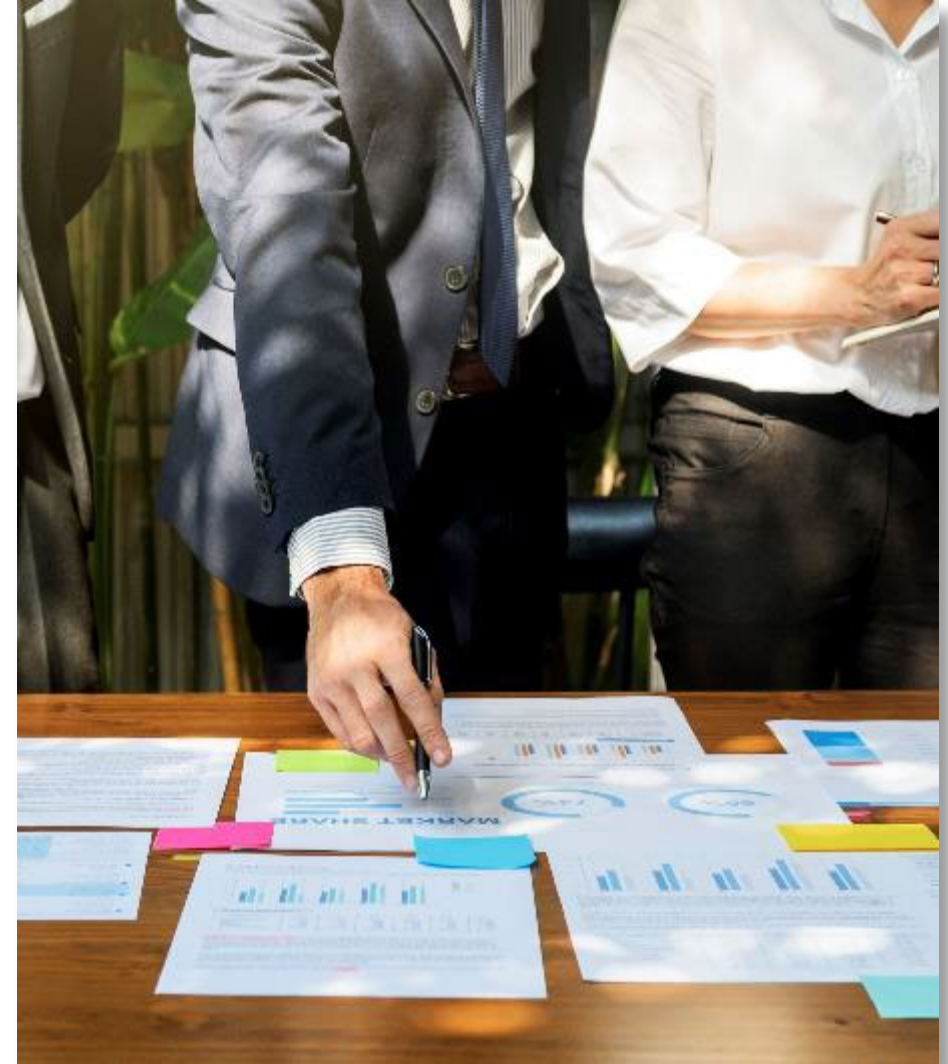
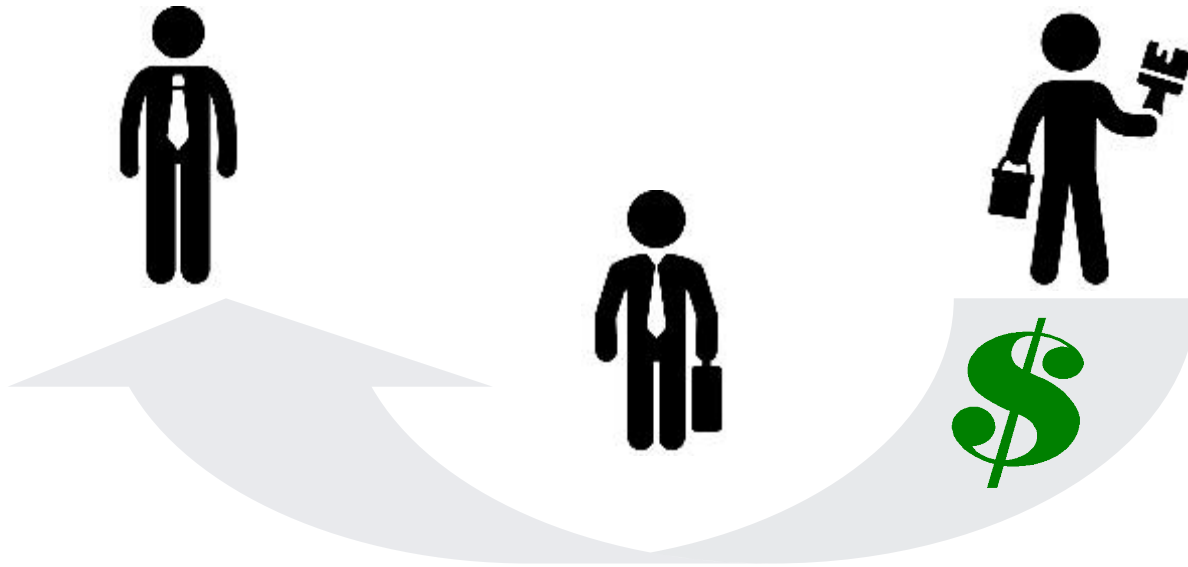
Upon default a secured party “may notify an account debtor to pay the account directly to the secured party and not the debtor.” UCC 9-607(a)(1)

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)

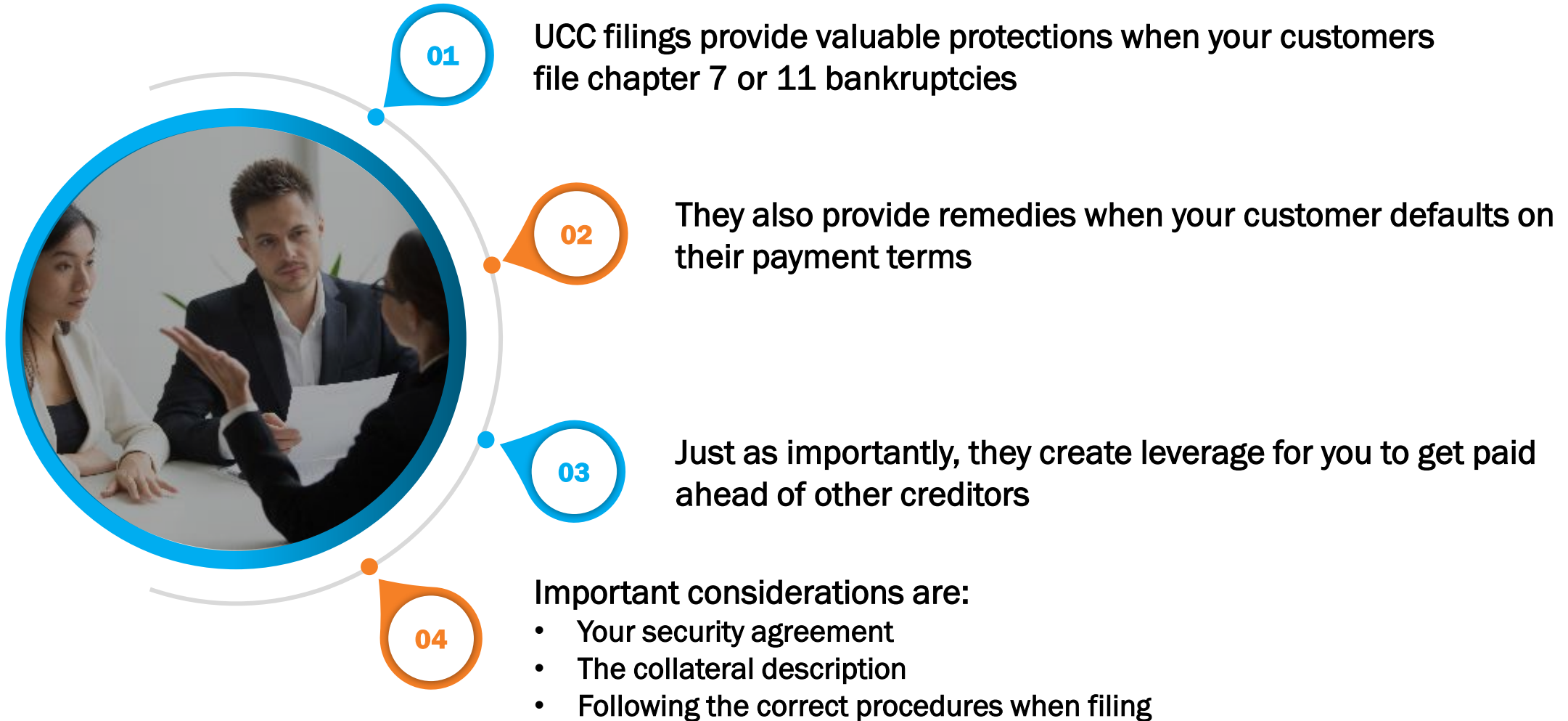


Disposition of Intangible Collateral

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



Review of Topics Covered





QUESTIONS

Thank you for your time!

Contact Us



www.ncscredit.com



Jerry Bailey

jbailey@ncscredit.com



800-826-5256 ext. 177

Education & Resources

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