

# Debt Sales 101 Mini-Series (Episode 1): How Debt Sales Work and Why Companies Use Them

Speakers: Joseph Schuster and Chris Eastman

Joseph Schuster:

Welcome to our new podcast miniseries on debt sales. My name is Joseph Schuster, and I'm a partner in the Consumer Financial Services Group at Ballard Spahr. And I'm one of the co-hosts of this podcast miniseries. Over the next six episodes, we're going to walk through how debt sales actually work, not just in theory, but in practice. We'll cover the business reasons company sell debt, the legal and regulatory framework that governs those transactions, where things most often go wrong, and ultimately how companies can structure debt sales in a way that is both commercially successful and compliant, as well as many, many other topics.

I come at this as an attorney who spends a lot of time on the legal structure, regulatory risk, and contracting side of these transactions. My co-host, Chris Eastman, brings the business and operational perspective, how these deals work on the ground, how portfolios are valued, and what buyers and sellers actually care about. Whether you're new to debt sales or have been around them for years, our goal is to give you a clear, practical roadmap for understanding the market and avoiding common pitfalls. With that, Chris, I'll turn it over to you to introduce yourself and add anything else that you'd like to discuss that we're going to address during this podcast series.

Chris Eastman:

Yeah. Thank you so much, Joseph. My name is Chris Eastman. I'm the founder and CEO of Franklin Ross Strategies. We're a consultancy that helps companies, specifically among other things, with debt sale. My background, I've been on both sides of the debt sale transaction in my career. Started off on the banking and FinTech side, leading a number of organizations and strategy and operations over collections and recoveries. And then most recently prior to starting up Franklin Ross, I was the CEO of Pendrick Capital, one of the largest debt buyers in the medical debt space in the United States.

So I've seen this both from the side of the seller and I've experienced it on the side of the buyer. And I think that gives me a lot of nuance and insight into how to think about debt sale, where to drive value, and where are some pitfalls that we can work to avoid. I think it's important to note that in addition to partnering with Joseph and Ballard Spahr on a couple of debt sale deals, Joseph and I go way back. We've been friends and colleagues together at Goldman Sachs where we were both managing directors for a number of years. And so we've done a lot of work together from a debt sale space, and look forward to walking you through our knowledge and experience over the years and through this series.

Joseph Schuster:

Thank you, Chris, for going through all of that. I think with this episode, maybe we start with, at the highest level, what is a debt sale?

Chris Eastman:

Yeah, Joseph, that's a great question because that leads to a lot of why do we do that and so forth. From my perspective, when you're selling charged off unsecured debt to monetize recoveries in the portfolio, that's when you go through the debt sale process. So really what's encompassed in that is taking your charged off accounts that are unsecured at that point and then pulling together the title and the right to collect accounts, and then moving those to a potential buyer in this space. Can you shed some light on that from a legal perspective, Joseph?

Joseph Schuster:

Certainly. Well, and you touched on a couple of things in there. The first one I'd say is title. That's the biggest thing that you have to have. You have to have title to what you are selling. You also have to know what you're selling. In our next episode, we're going to cover different things that can be sold, types of debt. But fundamentally, you will many times have complex structures with consumer or small business items where maybe a bank's originating the debt. It is then being serviced by FinTech. At a certain point that FinTech may end up with the account. And so receivables versus the account is an important distinction. But who has title to the account? That is the entity that can sell the account. Who has title to the debt is the entity that can sell that debt. And you need to have that chain of title because this can move around a fair amount too.

So as you think about that bank to the FinTech, there might be investors who have either purchased it, purchased a participation interest, but you have to know all of those types of things to ultimately say, who can sell this debt, but also who does selling the debt affect? Whether it's those extra investors, whether it's somebody who's been servicing receivables? All of those types of things are what you need to consider here.

Now, I'll say a couple of pieces on the legal front. To sell debt, you have a purchase and sale agreement, a PSA. Those will generally be a two-party or a three-party agreement. A two-party will be when somebody owns that title, and they are just selling it directly to a debt buyer. The three-party agreements will be where there's somebody who owns the receivables, has the right to purchase the accounts, and a separate entity, maybe that originating bank, owns the account at this point and will ultimately be transferring title to the debt buyer.

Debt buyers will always want to know what that chain of title looks like. Because there are state laws that require the ability to trace that title of the debt back all the way to when it was originated. And that's also important if there is a legal strategy that is used to collect on those debts.

I'll just say a couple of things as well that I think can sometimes be common misconceptions. Selling debt is not agency placement. The sale of debt, the entity that currently owns it, after they sell it, no longer owns that debt. They can contractually include certain audit rights to be able to see how the debt collection is going, making sure that it is being collected on in the manner that the contract provides. And regulators expect that. There's a number of different things that regulators expect to see in that PSA. And those vary based on the types of debt. Again, we'll get into more of the legal structure later. Keeping it high level, I'll just say that that is something to keep in mind. You have a difference between agency placement and this.

It's also not outsourcing collections. Again, that debt is being sold. The party that's selling the debt no longer owns the debt. The things that they would've done on those accounts, they may no longer be able to do. For example, pulling monthly reports on an individual. After that debt is sold, there is no reason that the selling entity can pull those monthly reports. They no longer have that permissible purpose under the FCRA. The FCRA is the largest growing area of litigation that we saw in 2025. I'm suspecting that 2026 will be similar. So there are a number of different things that just need to be considered both at the contractual level, and then what is happening when that party is selling debt. Chris, is there anything that you'd add on as we structure the legal pieces of this as well though?

Chris Eastman:

No, I think that's really thorough. And we'll get into some of the nuances in future episodes around, as you mentioned, rights after close and contractual things to keep track of. So there's a lot of things that we'll be unpacking together in future episodes.

Joseph Schuster:

Yeah, I agree. So maybe we go into a little bit of why do companies sell debt? And I think that this is both... There are a lot of existing companies out there that are selling debt. I think that there are some companies though that are realizing that they may have some of these debt assets on their books and are getting into it. So if you could touch on just why existing companies sell debt, and why maybe an entity should consider selling debt as well. I think that that would be helpful for this first episode.

Chris Eastman:

Yeah. I'm happy to walk through the reasons companies do debt sales. And I think there's a number of benefits that companies are evaluating when thinking about it, Joseph. The first is a debt sale really accelerates revenue and brings it in immediately, which has a lot of positive P&L benefits to the company. Traditional recovery methods, think about in-house collections and recoveries, post-charge-off agency recoveries or a legal strategy really brings in recoveries over the course of a seven, 10-year, even longer period of time. A debt sell accelerates those and that upfront payment after executing the PSA allows companies to recognize the revenue immediately versus over long periods of time.

The second reason that companies will often do it, Joseph, is similar to number one, but it really accelerates cash flows into the business. Getting that cash upfront allows them to reinvest and immediately deploy that back into the business. This is a reason a lot of FinTech companies will look to do debt sale so that they can turn around and invest in growth, invest in capabilities to service their customers in other spaces.

I'll highlight that building out a strategy in-house can be costly and time-consuming. It can take several months and years to build out an agency strategy. It goes through multiple phases of recoveries. Building out a legal strategy in-house requires hiring people to manage that legal strategy, bringing on a number of law firms. And then regulators are going to expect you have good compliance oversight of all those vendors as part of a well-managed vendor program. So the cost to build out in-house, the cost to maintain and oversee that can be significant, especially for companies that are smaller and growing and new to the space.

So a debt sale process is also much simpler to execute and requires less investment upfront than building out and managing a strategy in-house. Sales can be executed in a number of weeks if you have all the materials together and ready to go. So I think for companies looking to monetize their charge-offs in a quick timely manner and accelerate cash flows and recognize P&L, there's a lot of reasons why companies might choose debt sale. Now, Joseph, maybe now that we've looked at reasons companies do that, are there anything you'd like to add in terms of why, and maybe highlight where things can go wrong as well in the debt sell process?

Joseph Schuster:

Certainly. And I would add, in addition to the two that you had, Chris, about why companies sell debt, you do get that immediate revenue. There is that cash flow. There's also, it's easier than building out that strategy upfront, and having all of the regulatory and compliance components of that, though we certainly help clients build those too.

It's also easier than outsourcing to an agency because you have similar responsibilities there. Whether you are responsible for the receivables or responsible for the account, a third party debt collector is acting on your behalf. Now, again, there are expectations from regulators with respect to debt buyers, but there is a level where you are removed in that instance. You've sold it, you've done your appropriate diligence, we'll get into all of that, but you are not subject to those over the continual items that are associated where if you still own the account or receivables and are using a third party.

The only additional reason I'd like to just briefly mention is that we do see sometimes entities getting out of a line of business. And in those instances, there are those in-house responsibilities that, Chris, you're talking about, that maybe they've already built them out. But as the amount of accounts dwindle, if you have requirements to your credit reported, and so somebody could file a dispute with respect to a credit report, or if the type of account has dispute rights, and a person files a dispute with you, you need to be able to respond to those. If you want to be able to exit a business and be clean about it, selling that debt is a way that we see companies exit businesses as well, separate from the sale of the actual business.

Chris Eastman:

That's a great point, Joseph. I think you and I have both experienced that over the course of our careers and helped other companies do that. And that reminds me of the seven-year requirement to retain data. And so requirements to retain data for seven years can force companies to keep systems up and running operationally that they otherwise wouldn't if they're selling those accounts. So that's a really great point there.

Joseph Schuster:

Absolutely. And so I'll preview a couple of things of where I see companies run into areas where that create some difficulties in debt sales that can, if the preparation is done upfront, make these deals flow a lot smoother. The first one is documentation, making sure that, you were talking about those record retention rules, that you have the documentation. Debt buyers will want to know what documentation exists with this. The debt buying industry is a heavily regulated space. I think that Chris can share that we work with some of the most reputable debt buyers. And those debt buyers will want to know that they can have the credit agreement or the underlying agreement that ultimately led to the creation of the debt. They want to be able to have that chain of title. They want to be able to have the items where the person made payments or stop payments so that when the debt buyer is attempting to collect on that debt, they can show, they can prove the debt to the consumer, whether that's when they're collecting directly from the consumer, or if they're using a litigation strategy as well.

The second one is the data piece. Being able to know what data you have, and I'm sure Chris could add something to this as well, but to make it clear both when you're looking at possible debt buyers and you're sharing data with them so that they can price the debt, but then also when you are ultimately selling that debt, that data needs to be able to upload easily into the debt buyer's systems because they want to make sure that it's clean, that it matches up with that documentation that we're talking about, and that then they can start collecting as quickly as possible after they've followed the regulatory items that they have. So the data is very important.

Then the piece that I would add is the ownership history, how that debt flows. And this kind of goes to the top ones as well, but this is more on the commercial side. Anytime that there is a sale of the debt, there should be a bill of sale associated with it. The debt buyer to whom the debt is being sold will ask about that bill of sale. The PSA that we put together when we're selling the debt will include a bill of sale as well, but it should also encompass any previous bills of sale that have previously been executed with respect to that particular debt.

I think that generally these items that we run into from a regulatory perspective also have considerations from a business perspective as well. And there are more niche legal items that we run into periodically from regulatory perspective, whether it's questions about whether specific state laws were followed, or licenses obtained, or considerations within the contract, things of that nature that we'll get into in future podcasts. But Chris, I'd be curious just on this one, as I went through those, when you think about it from a business perspective, the legal and the business pieces there, they're fairly well aligned in this respect. Do you think that's right?

Chris Eastman:

I do. I think that buyers are generally going to want to know that the account was serviced and collected on in a compliant manner. So they're going to want to know that right to cure letters, if that's required, were delivered, charge-off notification was delivered if required by law, so that they have a history that enables them to continue collecting on that. And that ultimately protects them as the buyer, but it also protects you as the seller in terms of ongoing sales maximizing commercial benefit to you, and then ensuring that there's no regulatory feedback that you receive as a seller in the future.

Joseph Schuster:

Chris, from a high level perspective, I think we've covered most of the things, and I think we can wrap up here, but anything else from a high level, what is a debt sale, that you want to cover before we wrap it up?

Chris Eastman:

I think we got everything covered, Joseph, and I'm looking forward to our next episode on what can be sold and understanding eligible debt and portfolio composition.

Joseph Schuster:

Yeah, I think that's great. So I think that we covered a lot here about how debt sales are fundamentally a business decision, but I would add that they are one that live or die on the legal execution and the regulatory considerations associated with them, again, which we'll get into in future ones. Now that we've explained why companies do debt sales, in our next steps, we're

going to talk about what can actually be sold and what usually can't or what isn't. So please tune in next week for our next episode in this miniseries on debt sales.