

# Dealing with Lenders During a Pandemic

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## No surprise here.....Doing business during a pandemic is tough.

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- **Business owners are facing financial distress due to any number of factors.**
  - Organic operating challenges
  - Reimbursement issues
  - Landlord and vendor difficulties
  - Disruption of staffing
  - Increased labor cost
  - Disruption of the supply chain
  
- **All these stresses make it difficult for each business owner to meet their obligations to lenders.**

# Head in the sand is NOT a strategy.

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- **Although tempting, this is not a solution. Instead:**
  - **Having an early conversation with your lender is preferred ...remember your lender likely does not want to take over and run your business in order to get paid.**
  - **Need relief? Provide your lender with information in order to meet your request...why the problem? Why will the relief you request work?**
  - **What adjustment can you make to the business? Cost-cutting?**

# Things not to do!

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- **Don't borrow Trust Taxes, i.e., sales tax, employees' withholding, or any other tax you collect and remit to state, federal or local government ....you will create personal liability.**
- **Don't hide assets, i.e., transfer to friends and family.**
- **Don't inflate values to borrow money to dig out of the hole.**

**WHY? Because at the end of the day and if all else fails, you may need to seek bankruptcy relief and relief is only available to the honest debtor.**

# Not all of you represent the debtor, but instead the lender: What do you do?

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- Review loan documents, including loan covenants and reporting obligations, to fully understand your rights.
  - Review collateral documents, financing statements and related filings for completeness.
  - Renew or update financing statements as appropriate. Request that the borrower execute any missing collateral instruments.
- Monitor the borrowers' financial and operational reports to identify trends and be prepared to act.
  - Check the borrower's performance under its covenants, especially if you have determined there are steps you should take to strengthen your position. The borrower's request to waive these nonmonetary covenant failures (that you discovered above) is the perfect opportunity to seek to correct any deficiencies you discovered in your review.
- Review status and/or confirm that there are no defaults or forbearance agreements with respect to other debt or lease obligations.
- Maintain an open line of communication with your borrower.

# What if the work-out does not work?

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- **Business owners can consider Chapter 11 or, if appropriate, Chapter 13 or Chapter 12, to try to preserve a business....these solutions work best if the debtor has a business plan for saving the business.**
- **Several tools are available to help debtors obtain relief:**
  - **Automatic stay**
  - **Ability to reject burdensome contracts**
  - **Restructure or forgiveness of debt possible**
  - **Discharge**

Notice I did not mention Chapter 7.

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**WHY?**

# What does the lender do then?

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- **First and foremost, evaluate what is a successful outcome.**
- **Evaluate whether you would consent to the use of your cash collateral to fund the borrower's operations in a Chapter 11 case.**
  - **If so, what type of "adequate protection" of your interests will you seek from the bankruptcy court?**
- **Understand the provisions regarding post-bankruptcy debtor-in-possession (DIP) financing, which can provide enhanced lien positions for the DIP lender.**
  - **If the borrower requests bankruptcy court authorization to obtain DIP financing from another lender, you will want to be prepared to assert your rights with respect to lien priorities and commingling of cash collateral.**
- **Be prepared to act quickly in the event of a Chapter 11 filing. Although the reorganization itself may take a year or longer, several important hearings are conducted at the outset of the case that can affect the lender's rights.**

# Q&A DISCUSSION

For more information email Jan Hayden or David Folds

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