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Nowland Law

Business Bankruptcy





The Law Offices of Thomas F. Nowland

Business Bankruptcy

- Informational Purposes Only -

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Thomas F. Nowland is a Southern California Business Lawyer located in Newport Beach, California, and is experienced in all areas of business and personal bankruptcy. Call Nowland Law today.

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Business Bankruptcy

Introduction

Introduction

Things were hard enough before COVID19 broke the business world. Advertising & marketing prices were skyrocketing. Bids on pay-per-click engines were going for \$15-25 per click on most engines.

The pure volume of competitors on the market was just astounding. The benefits of 'globalism' had shifted away from the early phases of being able to source services, products and materials for pennies on the dollar; to only slightly discounted prices than the U.S.

Then the events of the quarantine and shutdown hit businesses globally, sending us into a global recession that will take years to dig out. It's not a wonder you are reading this ebook. Here is just a short list of some of the challenges you are facing right now:



Business Bankruptcy

- The business debts have gotten so large, you can't mathematically or realistically pay them down.
- Despite not being able to produce the same numbers, you are still on the hook for long term expensive commitments. Things like facility leases, contracts, and equipment leases.
- Employees are starting to get frustrated that they must deal with business debt collectors.
- You are at a point where your personal profitability (being able to pay yourself and pay your own personal debts) is being threatened.
- You have liens on your home, and the creditors are considering foreclosure.

If it's time that the business has run its course, then it's time to work with a business attorney. One who will work to try and defend your personal assets from creditors and cease the harassment from creditors.

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Just remember, this book is about business bankruptcy. While the Nowland Law firm focuses on serving business clients, and performing business bankruptcies, sometimes a personal chapter 7 is valid too. This is valid when you are personally liable for business debts.

Business Bankruptcy

How Much Does It Cost?

It's a bit of a catch-22. You're out of money; but now in order to declare bankruptcy, you need money.

This book has a chapter that discusses alternatives to bankruptcy. The bankruptcy process is a process held almost entirely in the courts. To add fuel to the fire, anything surrounding other people's money and disputes about that is going to make anything in court longer, more expensive, and more complicated.

You have all these ingredients.

The bankruptcy process is a paper jungle. Your lawyer is your guide. They must be paid to guide you through, take care of the threats, and handle the toughest challenges. Once you get to the other side of this paper jungle, your debts are now discharged. It may be worth it.

Business Bankruptcy

How Much Does It Cost?

Given the fact that you are not able to pay back people that have provided services for you without charging upfront, do not be surprised that a bankruptcy lawyer will charge you up front.

So how much does it cost? Obviously, simple bankruptcies cost less. Contentious, large, dispute ridden bankruptcies cost significantly more.

Here is what to expect.

A very simple, straight forward Chapter 7 business bankruptcy may cost \$1,000-5,000 in attorney fees.

Chapter 7s with likely disputes or complications or simple re-org Chapter 11s can run between \$10,000-\$25,000

If you are a large business, expect to pay \$25,000-\$50,000. Very large companies will be looking towards \$100,000.

Business Bankruptcy

What A Business Bankruptcy Does

Consider your legal entity. If you have done business as a sole proprietorship, DBA, general partnership, you automatically might want to consider going the personal bankruptcy route.

Your business debts are all personal debts, because there is no separation between you and the business.

If you have a Limited Liability Company, S or C corporation, etc., then as a separate business entity, you will be closing the debts of your business.

At the end of the day, a business bankruptcy is the court system's best answer (and mostly a process) for which the State, your creditors, and you decide how to best divvy up the assets that remain; liquidate your holdings and pay off what can be paid of the debt.

After that process is completed, the business debts of yesterday have been considered closed.

Business Bankruptcy

What A Business Bankruptcy Does

Most businesses close their business when entering a bankruptcy, however, there have been businesses known to not only continue to operate during the bankruptcy process; but they have also been known to make a comeback after the bankruptcy process.

If you wish to continue to operate your business and go through bankruptcy, make sure to find a qualified California business bankruptcy attorney to help guide you through this. You will need resources to pay the attorney for their guidance. Typically, this will be needed upfront, as your credit worthiness is implicitly not there.



Business Bankruptcy

Is It Right For You?

Here are some assessment questions and their implications. Use these questions, in addition to a discussion with a qualified Business Bankruptcy attorney to determine whether the business bankruptcy process is right for you.

How liable are you personally?

Have you personally signed for loans meant for business purposes? Have you signed a “Personal Guarantee”?

Are you operating through a sole proprietorship, partnership, or DBA? If so, you will need to work through a Personal Bankruptcy.

Did you offer your property as collateral for credit? If so, that property may or may not be seized during the bankruptcy process. It may also be seized and sold as part of a judgment from a lawsuit.



Business Bankruptcy

Is It Right For You?

How have you signed all of your credit agreements?

If you signed “as” an officer of a corporation, you are safe.

However, if you just signed using your own name, aggressive creditors can argue that you essentially made a personal guarantee on the credit agreement. So the right way to do this would be “George Arlington, as CEO of Madison Lawn Care, INC.”

Fraud. If you used fraudulent business practices, a creditor’s attorney might be able to argue that you are personally liable.

Tort Actions. If you (or even an employee) acted in such a way that was extremely dangerous, negligent, or harmful; it could be argued that you are personally liable.



Business Bankruptcy

Is It Right For You?

Didn't read the fine print on loans or credit cards?

Here is the famous 'always read what you sign' advice. Unfortunately, when you sign up for a credit card and use it just for business purposes, or take on a special loan, make absolutely sure that the contract does not state you are personally liable for the charges. If you take on that responsibility, do so knowing that you are personally liable.

Spousal liabilities. If any of the above is true; your spouse might be jointly liable for all of the credit, in "Community Property" states.

Is the business still making decent money?

If the business is still making great money; it may be better to go with a negotiator, mediation, credit management. You might even have to hire a CFO, accounting firm, or specialist firm to help budget your business in such a way as to be able to pay back the debts without filing bankruptcy. If there is a unfair or crushing debts that you want to declare bankruptcy because of, but still keep your business open; you might want to talk to your business bankruptcy attorney about Chapter 13 instead.

Business Bankruptcy

How Does It Work?

The Chapter 7 is the simplest form of bankruptcy. The court shall assign a “trustee”. This person (or entity) will have the duty to liquidate your business assets as best they can to satisfy as much of your creditor’s claims as possible.

The very first step is that you are required to go through a sort of ‘training’ or ‘counseling’ with an approved credit counseling entity. This process will force you to go through the nitty-gritty of your numbers and begin considering whether bankruptcy is truly the best option for you.

Should you wish to continue, the courts will need certification that you have completed the credit counseling process. At this point there will be flat fees charged by the courts to begin the bankruptcy process. Then you will have attorney fees to consider. There are a multitude of forms and documents that your attorney can help you fill out.

Business Bankruptcy

How Does It Work?

These forms and documents are your initial declarations of property you think is exempt from the hands of your creditors, along with the assets you have. You must be honest in these documents, as there are a lot of negative consequences that will befall those who are discovered to have omitted or lied.

At this point, you place control of your assets and information into the hands of the bankruptcy court.

All your property is now in play at the bankruptcy court. The Trustee is assigned. One thing to note, is the Trustee mainly operates for the benefit of your creditors. Obviously, they operate in your interest in the sense that they must follow rules fairly and objectively to give you fair bankruptcy process; however, their goal is to remit as much as they can back to the creditors. The creditors will, after all, be forced to accept significant losses in your bankruptcy.

Business Bankruptcy

How Does It Work?

To reflect this, there is an economic benefit for trustees. They are often paid a percentage of recovered assets.

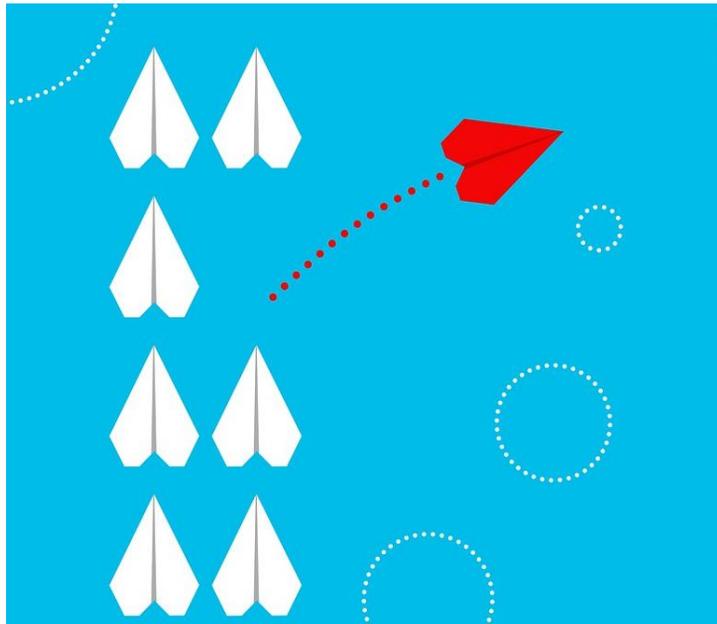
There will then be a series of events and meetings in which you will physically be present and questioned about your prepared paperwork by the trustee. Creditors may even be present and have the opportunity to question you, although this is far less common. Typically, the creditors will rely on the trustee to do the job.

Finally, you will be required to go through an additional training on the topic of managing your finances. The US Trustee will often give you a short list of training courses for which you can choose from.

Eventually, a Notice of Discharge will be filed with court, and you have a certain amount of time (a few months) to wait after the notice. At that point, you have finished the bankruptcy process, and either most or all of the business debt has been discharged.

Business Bankruptcy

Alternatives



There will be no easy options when you are on the hook for large amounts of debt. However, if you've read the above and decided that the bankruptcy process is not for you; here are a few other options to consider.

Mediation & Negotiation.

You can hire a team of mediators and negotiators to attempt to get your creditors 'to the table' and re-negotiate debts. When this process is formalized, it is known as a 'workout'.

Business Bankruptcy

Alternatives

Have nothing to take.

This is less of strategy, and more of a situation or circumstance, however, it is not uncommon for business owners to simply have no assets to take.

If there are no business assets to take, and your personal assets are limited (no house, no owned cars, no stacks of silver and gold, other valuables, and no income other than that of the business) then you might just let the creditors have at you. You can expect to be sued. If you truly have nothing they can take, and you are not in a community property state, or your spouse is in the same position; one might theoretically consider just letting them get a default judgement against you. After all, what will they take?

You'll have that judgement hanging over you for 10 years (default) and up to multiple decades if the creditor continues to renew the judgement; so, you can see why this isn't a strategy for most people. It does buy you time though. (Keep in mind, interest is automatically added by the court, per state or federal law for time that elapses.)

Business Bankruptcy

Alternatives

Let them take it

Another strategy is just to acknowledge you owe the debts, and let them take the property you promised as collateral, income you may get from a job, etc. Again, this is a highly personalized choice, and you should consult with a bankruptcy attorney and financial advisor to see if this is truly the path you want to take.

Close down the business, sell assets, use the funds to pay off debts

If you can sell the business assets to pay off the debts in full; then you won't have to worry about being pursued. However, few businesses are in a position to sell off most of their assets and still operate.



Business Bankruptcy

Alternatives

Chapter 13 Bankruptcy

Chapter 13 bankruptcy is a process that looks similar to Chapter 7, however, you are given a strict payment plan to follow for a number of years.

If you can do this successfully, then the remainder of debts are paid off at the end of the payment plan. In some cases, this can be very lopsided to your benefit.

That's if you can reach the 'green acres' at the end of the payment plan. The payment plan is meant to squeeze every available penny out of the business while it is operating. Because cashflow is one of the most common business killers, imagine having to deal with normal cashflow problems plus a trustee cashflow. You may fail to make payments, and are right back where you started.

Business Bankruptcy

Alternatives

Chapter 11 Bankruptcy

This is similar to a Chapter 13, however, it is far more complicated with many sets of rules. This ebook will not dive into that, as it would take thick volumes to fairly depict it.

Suffice to say, unless you have about \$100,000 in liquid cash available to pay a bankruptcy attorney, this option might not work. You can always go through a free consultation with a business attorney to get a preliminary idea if it is worth exploring.

FREE CONSULTATION

Nowland Law is a California Law Firm dedicated to representing business interests.

We've been down dangerous legal paths before and know how to guide a business out of them.

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