



NAHB Building Business Briefs

Tips to Survive and Take Advantage of Unique Opportunities

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In addition, we also offer some purchasing opportunities to consider — through bankruptcy asset sales — that in a strong market might otherwise have been out of reach.

First, let's address what you need to do to consolidate your operations and protect your business:

Conserve Cash — Cut Costs

Reducing cash expenditures requires rethinking every aspect of business. In a down market, the goal is for the business to survive long enough to weather the down cycle.

In order to accomplish this, you need to be able to operate twice as long on half the cash. Reduce overhead operating expense every place you can.

Common expenses that can be cut include:

- **Staff:** Most businesses can operate just as effectively, perhaps more so, with far fewer people. Experts can usually reduce payrolls by about half within the first 60 days.
Work toward a skeleton team, but take care to comply with the U.S. Department of Labor [Worker Adjustment and Retraining Notification](#) (WARN) Act requirements, but eliminate dead weight.
- **Office Space:** Evaluate the business' square footage needs. Are you using all the space you have, or could you operate out of smaller facilities?
Renegotiating your lease, subleasing or selling the building can allow you to cut costs or bring more cash into your business during the down market.
- **Outside Services:** Are you paying third parties for services that could be done in-house?

- **Inside Services:** Likewise, would it be less expensive to outsource some tasks that are now being done in house, i.e., hiring an accounting firm instead of maintaining an accounting staff.
- **Non-Critical Expenses:** That lawsuit that you once thought was very important to pursue is probably not critical to everyday operations. Neither is marketing or advertising in a down market. Reducing or eliminating these expenses can free up cash to sustain core activities.

Protect Against Personal Liability — Keep Personal Assets Separate

When desperate, principals often decide to increase their own personal exposure rather than let their business to fail. This is a terrible mistake.

- **Pay the Payroll Taxes.** This is a must. You are better off missing a payroll than not paying the taxes.
The payroll tax liability is often viewed by employers as the “bank of last resort.” The problem is that you can never, ever escape the resulting personal liability.
- **Do Not Guarantee Trade Debt.** If your business cannot pay the debt and a lawsuit is threatened, let them sue the business. Do not agree to sign for it personally.
Collection lawsuits take time. Use the time to try to pay the debt off. If you still cannot pay by the time the judgment was obtained, then the business was probably doomed anyway, so don’t expose personal assets to business liabilities.
- **Reconsider Existing Debt.** Carefully consider your existing liability to your bank or lender. If they are asking you to increase your exposure, determine what you are getting in return?
Keep in mind that this downturn is expected to last another two years. If your business can’t survive that long, a temporary extension won’t help.
- **Don’t Use Retirement Assets to Pay Company Debt.** Your retirement assets already have legal protection from creditors. In the event you have to consider a personal bankruptcy filing, these assets are generally exempt and you would be able to keep them. Don’t use this protected money to pay your company’s debt.
- **Don’t Cross Collateralize.** If you have more than one business or entity with assets, your lender may ask you to “cross collateralize” or pledge assets from another entity to protect the loan. Don’t. Remember, you initially set up these assets separately in order to protect them in one of them failed. Cross collateralizing destroys that protection.

Work With Your Lien Holders

Most lenders are willing to work jointly with borrowers. They really don’t want to own your

project or property and, in general, would rather try to jointly market than foreclose.

In today's market, the issue is trust. Does your lender trust you? If he does, he will almost always work with you. If he doesn't, he will ask you to turn over operations to a trustworthy operator.

Asset Sales in Bankruptcy — Watch for Bargains and Opportunities

In Chapter 7 bankruptcy cases, an appointed trustee who is not related to the company arranges to sell all assets that have any apparent equity. Even in a Chapter 11 reorganization bankruptcy, most businesses cannot successfully reorganize without selling assets. Generally bankruptcy cases are simply a forum to sell assets.

Watch the papers and trade publications in your area. Most sales of any size are advertised. The word "bankruptcy" is almost always prominent.

- **Private Sales.** Usually, but not always, these sales are conducted as auctions. If there is a particular asset or piece of equipment that you are interested in purchasing, do not hesitate to make an offer. Even if the trustee does not accept your first offer, you've started negotiations. Haggling is normal and bargains are the order of the day.
- **Bankruptcy Trustees.** You can get a list of the local trustees and ask to be put on their mailing lists for any future sales. Trustees are interested in the best combination of price and terms. If you are aware of a bankruptcy case that has assets and are interested in buying, call the trustee directly. Always keep in mind that it is all about the money. If it is a significant asset, consider building into your offer a "break-up fee" or cost reimbursement provision to cover your costs in case you are not the winning bidder. (The trustee might refuse, but there is no harm in asking.) Some, but not all, trustees are lawyers. However, you do not need a lawyer to do a simple asset purchase in most bankruptcy cases.
- **Show Up and Bring Your Money.** If a sale is advertised as an auction, you should show up. Many times the sales are not well attended. Even when a sale is conducted in court, the judge will almost always ask if there are any other interested parties in the courtroom who want to bid. As a buyer, so long as you have authority to act for your company or enterprise, and the court is satisfied, you can bid without a lawyer. There may be time limits on closing the purchase, but the court or trustee will explain these and ask if you or your company agree to the deadlines.

Although the market has fallen, following the preceding tips can help you weather the storm. By reducing expenses on non-critical elements of your business, you may even be able to conserve enough cash to add value to your business by purchasing from a bankruptcy asset sale.

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