



Mary Hanson

About the Business Advisor

The Business Advisor is written and published by Mary Hanson, a business attorney in Torrance, California.

Mary Hanson has a law degree from the University of Wisconsin and an MBA from the University of Southern California. She has practiced business law exclusively for 30 years.

She provides legal services related to owning, operating, buying, selling, and structuring businesses. Her clients are business owners in many different industries. She handles corporations, LLCs, new businesses, new ventures, and a broad range of contracts and business decision-making.

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DO'S AND DON'T'S FOR TOUGH TIMES

by Mary Hanson

Many business owners are dealing with tough times. And we mean REALLY tough times. The economy has resulted in serious and prolonged reductions in revenues and challenges to profitability and survival. Some economists say that the "end of the recession" won't mean noticeable improvement in conditions for some time. Businesses that are most affected will be challenged to survive. Some business owners may decide that the anticipated rewards of staying in business do not justify the effort and risk involved.

Here are a few "do's" and "don't's" to help you deal with tough times and tough decisions:

- Do utilize outside advisors. But don't try to get financial calculations from your business attorney, legal advice from your accountant, and business planning advice from your technical person. Be clear on getting advice from the appropriate sources.
 - Do check out the qualifications of advisors. If you are using a new advisor, or using your old advisors for matters that are new and different, check out their qualifications. Have they handled matters like yours before?
 - Do meet with a bankruptcy attorney if a personal or business bankruptcy is anywhere on your radar screen. A bankruptcy is least painful if it is planned a year or more in advance of the bankruptcy filing. Bankruptcy advice early on can be crucial in making the best decisions, whether bankruptcy will or will NOT be a good alternative. Meet early on with a bankruptcy attorney if you fear the bankruptcy of your customers or key suppliers. Find out when to stop doing business with a business partner that jeopardizes your profitability or survival.
 - Do your homework. If things are tough and you need to save money, doing a lot of your own work may be important. You should still use outside advisors, but if you need to save money, be prepared to read, review, calculate, compare, and do other work yourself. Advisors may be willing to provide services on special arrangements – but why
- Don't put your head in the sand, even when it looks like there is little you can do to make a difference. There are still differences between terrible and really terrible. It is important to make the best decisions even when – especially when – the choices are not good.
 - Do detailed financial planning with different scenarios. Do financial projections and monitor your projections to see how accurate they are. Use your projections to make your decisions for the future. Do more financial tracking and financial analysis than you have ever done when times were good.
 - Don't put additional money into a business to keep it going if you haven't done financial projections to justify the investment.

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“In addressing issues related to a potential closing of the business, you may see opportunities, improvements, corrections, or changes that you could or should make now.”

- should they if you are not willing to do more of the work?
- Be prepared and concise. When utilizing consultants or advisors, be prepared with a concise description of your situation if you want to save billable time. Have a list of questions for the attorney before you meet. Have your numbers crunched before you meet with your accountant for advice.
 - If you have overlapping problems, do let all of your advisors know. Your bankruptcy, real estate attorney, and business attorney should know of each other, and those attorneys should be advised if you are filing for divorce or were served with a lawsuit. Don't let information fall through the cracks.
 - Do control your 3-ring circus! If you are obtaining advice from your accountant, business attorney, and a divorce attorney, make sure you – or someone – is co-ordinating the advice. Don't let different advisors draw you in different directions without taking affirmative steps to co-ordinate the information and advice.
 - Do be honest. If you reach a point where you can't deal with something, can't pay, or can't concentrate, let your advisors know. Don't waste valuable time and effort pretending to handle something you're not handling. An experienced advisor has dealt with such situations before and will adjust his or her methods of advising you or the nature of the advice. But he or she must be aware of your limitations or impairment.
 - Let advisors know when you can't or won't take their advice. A good advisor, when so informed, knows how to warn you appropriately, by either giving you “last ditch” advice to “at least don't do ‘X’,” or sending you the serious letter setting out the “consequences of doing ‘Y’.” Such last ditch advice may be the most valuable advice you get. It is usually solid gold advice. But you won't get it if you don't inform your advisors of your plans to ignore their initial advice.
 - Do take notes. If you are handling matters that are complex, difficult, or emotionally draining, don't expect to remember the advice you are given – or what your last brilliant idea was. WRITE IT DOWN.
 - Do instruct your advisors not to perform services on your behalf without first getting your approval if they expect to be paid for it. Attorneys are notorious for providing services without getting client approval because they are “handling the client's matter.” In litigation, this is normal and necessary. Outside of litigation, why is this appropriate? Make anyone performing services for you understand that they need your approval before any services are performed.
 - Do consider upgrades of financial software that can assist with financial calculations. Does your current system adequately track inventory? Does it enable you to adequately project profitability? Are you able to get the information you need to do the calculations you need?
 - Use planning that considers various and opposite outcomes. If there is a serious chance that you will be closing your doors, does it make sense to invest in

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software, equipment, or other improvements? Weigh the risks and benefits of making expenditures that are necessary for survival against the risk that the business will close and the value will not be obtained. Only you can make those judgment calls and take that risk.

- If closing the doors is a possibility, start planning now what you will do then. In addressing issues related to a potential closing of the business, you may see opportunities, improvements, corrections, or changes that you could or should make now.
- Do consider liability and insurance issues. If you close your doors, will you face continuing liability for products under warranty, product liability, or contractual obligations? Do you plan to obtain an insurance policy covering the risks? Can you get such insurance? Are there steps you can take now to reduce the risks or to discontinue creating additional obligations?
- Do you have contractual obligations to provide services? How will you meet those obligations if you close the doors? Check your contracts for your right to terminate the contract, and for any cancellation fees or penalties for non-performance. Can you assign the contract or subcontract the work? Determine what a customer might claim in the event you can't perform. Identify methods of avoiding liability.
- Do review your insurance policies and key contracts. If there is a possibility that you would have to close the doors, is there a time for doing so that matches up with the expiration of expensive insurance policies or policies that have a cancellation fee, or the expiration or renewal of other contracts?
- If you close your doors, how will you dispose of assets like inventory and equipment? If you have made any assumptions about the value of your equipment or how you would dispose of it, check out those assumptions. Find out now if your anticipated avenues for sale of your equipment are still available.
- Do challenge your assumptions. Have you assumed that certain employees, competitors, or customers would purchase the business or purchase certain assets from you? Is this still realistic?
- Do plan layoffs. Anything involving employees warrants a review by an experienced employment attorney. Do you have an employee handbook or company policies that must be complied with if you lay off employees or close the business? Do you have the number of employees that brings you under state and federal requirements for warning employees of impending layoffs or the business closing? What is the potential for employee claims?
- Do tax planning. Don't be caught by surprise. Even if you're broke, state and federal tax laws may see something you owe taxes on. A likely "gotcha" is "forgiveness of indebtedness." If you are not required to pay back a debt, you will normally owe taxes on the amount forgiven at the rates for ordinary income. If this issue is anywhere on your radar screen for business or

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Publisher's Note

In tough times, caution is warranted in making any financial decision. Whether the issue is getting a loan, paying off a loan, making an investment, liquidating an investment, or just committing meaningful amounts of money to some endeavor, the risks are greater than in good times.

When times are tough, money spent the wrong way may not be recouped. Investments can become illiquid or provide inadequate returns. Income can drop, and sources of loans can dry up. In tough times even good investments can go bad, the wealthy can be cash-strapped, and credit-worthy borrowers may be unable to get loans. Caution, analysis, and projections of future expenses and future income are a necessity. It is important to do the hard work of reviewing and analyzing, and having a plan for dealing with less than desirable financial circumstances.

Mary Hanson
Attorney/Publisher

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- personal obligations, check with your tax advisor now.
- Do be cautious with any financial transactions. In the past, mistakes in business, loans, or investments could be made up later – with other investments or other income. That was then and this is now. You may not be able to make up lost funds. You may not be able to get another loan. You may not be able to pay down your loan quickly.
 - Do consider long term fixed rate loans. If the economy stays depressed for a long time, fixed payments over a long repayment schedule with a low fixed interest rate is the best type of loan to have. If inflation takes off, the repayment in future dollars provides even greater advantages.
- Do look for promotion opportunities. If you are certain that your business will survive and you will continue in business, are there opportunities for low-cost marketing in your industry? This may be a good time to build business recognition if you can afford to advertise or provide sponsorship when your competitors cannot.
 - Do ask others for ideas. You never know where good tips, leads, referrals, recommendations or suggestions might come from. If you have a real estate issue, your neighbor, accountant, attorney, realtor, contractor, or insurance agent might be the source of some useful suggestion. Then check it out. **BA**

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