



Ask SCORE for Business Advice

"Ask SCORE" Column Green Bay Press Gazette Thur., Feb. 11, 2010

Know Your Rights in Bankruptcy by Tina Dettman-Bielefeldt

Since writing about bankruptcy the past several weeks, I've had calls from concerned businessmen asking about their rights. The ready response to questions was that I am not an attorney. However, because Jon Olson, an attorney and SCORE volunteer, has provided information for the series, he was asked to respond. Some of the questions and Olson's answers follow:

"I'm behind in my business loan payments, and my banker said he can take my house. Can he do that?"

Lenders will often take a lien on personal assets when making a business loan. That could be a second mortgage on a home, or a lien on vehicles or deposit accounts such as CDs. The business borrower will often have to sign a personal guarantee, which makes him or her personally liable if the business does not pay the debt. Whether the lender will actually take the house or other collateral will depend on the assets of the business, and whether there are any other liens against the property.

"I thought that a portion of my house was protected. Is that true?"

Wisconsin's exemption law just changed on Dec. 16, 2009. Debtors can now protect up to \$75,000 of equity in a home (\$150,000 for a married couple) from judgment creditors. However, this protection does not extend to mortgage debt. If you borrowed money and pledged your home as collateral, your home is subject to foreclosure under the mortgage, even if you have less than \$75,000 in equity.

"I am falling further and further into debt and would like to sell off inventory and equipment to pay bills. Is that a good idea?"

Business loans are usually secured by the General Business Security Agreement, which gives the bank a lien on all business equipment, inventory, furniture, fixtures and the proceeds from the sale of any of those items. If the items are sold in the ordinary course of business (like inventory), the borrower may be entitled to keep and use the proceeds (cash) if he or she is not in default on the loan. If the borrower intends to sell items to keep the bank from being paid in full, the bank could bring a fraud or conversion action against the borrower. This could result in a judgment that may not be dischargeable in bankruptcy, and in extreme cases, could involve criminal charges.

“The calls from creditors are terrible. How can I stop the harassment?”

Business debts are not covered by the Fair Debt Collection Practices Act, where creditors must stop making collection call once the debtor requests in writing that the call stop. If collection calls are becoming a problem, you should see a credit counselor or an attorney. While an attorney can intervene between you and your creditors for a while, you will need to come up with a plan to deal with the debt, and communicate that to your creditors. And then follow through.

The topic of bankruptcy has generated more inquiries than any other subject covered in this column. For businesses that are struggling, the best advice comes from Olson. “Be informed and know your options and rights.”

If you’d like to learn more, contact the Green Bay Chapter of SCORE. Visit www.greenbayscore.org or call Cindy Gokey at 920-496-8930 for information.

[Tina Dettman-Bielefeldt](#) is co-owner of DB Commercial Real Estate in Green Bay and Assistant District Director for SCORE, Wisconsin.