

David Jon Hoiland, PLC

Fall/Winter 2008 Newsletter

Dear Friends and Colleagues:

I'm introducing my *Email Newsletter* with current news from my law practice.

Scroll down for this newsletter's legal topic: Why Business Owners File Personal Bankruptcy, or keep reading for news.

2008 NEWS:

I've had the pleasure of working with you on one, or more matters. You may not be aware of other legal matters that I handle. Since New Years, I've worked on a number of interesting projects, including:

Business Deals

- Represented seller in the sale of a 35,000 foot warehouse in South Minneapolis (4th offer is a charm!)
- Represented seller in the sale of a \$3 mil commercial printing company and 20,000+ foot facility
- Facilitated \$1 mil joint venture between two oil distributors in outstate Minnesota
- Represented buyer in the purchase of three franchisor owned restaurants for \$750,000
- Represented seller of local restaurant property to developer for \$1 mil
- Facilitated buyout between family members of 4 restaurants and one land holding company for \$1.5 mil
- Incorporated several new ventures and set up limited liability companies
- Represented two partners in the sale of packaging company with new Commission Sales Agreements for sellers
- Represented buyer of franchise auto repair shop
- Structured succession plan for financial planning and insurance agency
- Negotiated several commercial leases for retail stores and industrial properties

Workouts, Foreclosures and Collections

- Represented business owners and consumers in Chapter 7 bankruptcies
- Represented a private lender in the restructure of a \$2.5 mil loan on a distressed condo conversion project
- Negotiated a six figure settlement for a creditor from a bankrupt builder and his lender in a Chapter 11 Bankruptcy Plan
- Foreclosed a mortgage by a private investor against a failing builder on a \$1 mil property subject to numerous mechanic liens
- Cancelled a Contract for Deed against a local developer
- Guided a electrical contractor through a workout of a disputed \$150,000 judgment
- Represented homeowner and relatives in redemption of foreclosed homestead relating to SBA mortgages

- Represented client in defense of bankruptcy preference claim
- Filed 75 collection lawsuits and settled 60 collection lawsuits
- Defended several business owners in collection lawsuits
- Represented landlords and tenants in unlawful detainer evictions
- Advised several clients about asset protection

General

- Prepared wills and handled probates

I look forward to working with you on similar matters, or referring you to exceptional lawyers to handle matters outside my expertise. Thank you for your business and for your referrals!

Yours,

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Legal Article:

WHY SMALL BUSINESS OWNERS FILE PERSONAL BANKRUPTCY

By David Jon Hoiland

Not every business succeeds. Many fail. There are three main reasons small business owners file personal bankruptcy.

REASON ONE: Inability to repay loans.

Bank lenders and the SBA will usually sue a business owner and get a judgment some months after loan payments have become delinquent. The business owner always personally guarantees bank, SBA and seller financing, so the judgment goes against the business and the individual owner or owners. The judgment is usually in the hundreds of thousands of dollars.

REASON TWO: Threat of suit, or judgment by the landlord.

Most commercial leases require a personal guarantee. If the business fails in the short term, the landlord may sue for rents owing for the remainder of the lease term. This often amounts to more than \$100,000.

REASON THREE: Crushing credit card debt.

Often times small business owners use multiple credit cards as lines of working capital for their businesses. It is not unusual to see a business owner owing the equivalent of one to two year's salary on his credit cards, or \$100,000-\$200,000 of credit card debt.

When the business owner can't see how these personal debts can be paid off over a 2 – 5 year time frame, then personal bankruptcy may be a reasonable avenue to enable the debtor to get a "fresh start" in his financial affairs. This is a tremendous remedy for many.

In perhaps half of business failures, the owners decide not to file personal bankruptcy. There are always other options, although they are problematic. In many situations, creditors will accept a reduced payment to satisfy their debts or judgments. The SBA has standard procedures and guidelines for offers and compromises. Experienced landlords will sometimes accept something rather than nothing. In fact, in the present market, many landlords are reluctant to evict or seek judgments against their tenants. Credit card companies will often make cash settlements at 20-50 cents on the dollar, for debt that is more than 90 days delinquent. Their option is to sell the debt to collectors for 5-15 cents on the dollar. Surprisingly, it is not uncommon for creditors who obtain judgments to refrain from taking serious collection action.

Owners of failing businesses are under tremendous stress. They are afraid of creditors and of the courts because they don't understand how to handle the process of business failure. They don't know what to do, or how to make the best of a bad situation. They lose a lot of sleep. A business lawyer experienced in handling debt problems and bankruptcy can relieve much of the stress by explaining what will happen and explaining available options. The cost of such assistance is nominal. Once the business owner can see a roadmap of what lies ahead, once he understands the options and chooses the best course of action, he can move from a negative and depressed state of mind to a proactive state of mind. A legal consultation greatly relieves stress and enables the business owner to regain control of his financial destiny.