

# SURVIVING THE COMING RECESSION: A LETTER TO YOUNG ENTREPRENEURS

By: Jack Garson, Esq.  
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Dear Business Owner,

I hope this letter finds you and your business doing well. Even if everything's great now, it's not going to last. Winter is coming.

Recessions happen. We're due. Are you ready?

You may be doing great today, getting a lot of clicks or tweets or shares or whatever seems to be quite important nowadays.

But things change dramatically when recessions happen. There's a big difference between having a bad day and hitting the recession-wall. An architect-client put it well shortly after Lehman Brothers filed for bankruptcy on September 15, 2008: "The phones stopped ringing and all business—new and old—ground to a halt." That quiet lasted for many months. For plenty of businesses, it lasted years.

Some have yet to see the good old times. If you haven't been through a harsh recession before, it is hard to imagine the situation and harder still to plan for it.

So let me get you business preppers started.

First, fix your paperwork. When times are good, businesses focus on doing deals and making money. They obsess over design, marketing and sales—and the curated artisanal donuts in the employee yoga bar (yes, the ones with the turmeric and CBD sprinkles). Sometimes, though, the boring stuff is critical. A good contract can get you paid and keep you in business. A bad one can blow up your company. Recessions often show you which one you have. So, prepare. Make sure your contracts comply with the law—otherwise you may have liabilities, not legal rights. Then, get your customers to actually sign and return the contracts. Plus, save your contracts in a way that you can find them when you need them! It's simple advice, but it's overlooked more than you can imagine.

As Warren Buffet says, when the tide goes out, we see who is swimming naked. When the Great Recession hit, a lot of big banks turned out to be skinny dippers. Before the financial

fiasco, lenders practically used t-shirt cannons to shoot loans at borrowers. Once the doo-doo hit the Roomba (or vice versa), lenders tried to get their money back. That's when they learned it sucks to ignore the boring stuff. The banks got jammed up in courts for years because their loan documents were a mess—some weren't signed, some were missing and others didn't comply with the law.



The banks couldn't collect or foreclose and their legal bills skyrocketed. Meanwhile, squatters camped out for free in thousands of properties awaiting foreclosure, scavengers stripped metal and fixtures out of others, and some angry borrowers just completely trashed their former homesteads. With the right documents, lenders could have had their properties back quicker, in better shape and at less expense. It pays to fix your paperwork.

Second, plan for the failure of others. In a bad recession, some of your customers are going to file for bankruptcy. When they do, the pain gets spread around. Part of the agony is the dreaded clawback. I can say with authority that to truly appreciate a clawback's cruelty, one must experience it firsthand. In short, if a customer is overdue paying you and then finally pays you right before filing for bankruptcy, the bankruptcy court can "claw back" the money. One moment it is "your money." The next moment it's going to the bankruptcy trustee who took it away from you (with pennies on the dollar going to pay all of the other suckers who did business with your client).

Your customer's bankruptcy can hurt in plenty of other ways. If you sue a customer for payment and get a judgment, the victory can be erased by the bankruptcy rules. If you're a landlord, you may discover that tenants who file for bankruptcy can easily terminate their leases—and avoid paying a lot of past-due rent, too.

But, if you're aware of the rules, you can protect yourself.

Getting collateral is one of the best protections. Under certain procedures, you can seize and sell that collateral to cover your customer's debt to you. You can also get a lot of protection with personal guarantees, bonds and letters of credit.

Third, make sure you have financial reserves to survive the downturn.

In good times, you can practically get by on your charm. In bad times, everyone wants cash.

You need plenty of it. Sure, it may seem like it's pretty easy to borrow money—today. Trouble is, cash gets scarce when a recession hits. So, line up the money now. Take bankers. After the recession hits, they don't need another sweaty handshake from the conga line of desperate wannabe borrowers. Instead, invest in a relationship with a lender today. Jump through all of the "getting to know you" hoops. Provide info. Sign away your life. Borrow some money. Pay it back. Then, get a line of credit or some other loan that will be your emergency reserve—or part of it—when you're no longer getting by on a smile.

Fourth, sell too soon.

You may need to sell some or all of your business while you're still a rising star with plenty more potential. Legendary investor Bernard Baruch famously survived the 1929 stock market crash. When asked how he thrived, he replied, "I always sold too soon." This lesson is rarely learned your first time around the disaster track. But, taking some chips off the table while you're still winning—cashing in early—is sometimes the only money you keep. As my dear nana used to say: "Sell while you're still cocky. It couldn't hurt."

Fifth, deploy some savvy business and legal maneuvers.

Here's a lightning round of examples.

- Put different businesses in separate entities. This reduces the risk of one loser dragging down a winner.
- Bargain for termination rights in certain contracts—even if you have to pay a fee—and cap your potential liability in others. Getting out of one bad deal, or at least limiting the damage, can be worth more than ten good deals.
- Do some due diligence, too. Check out the finances and history of companies before you do business with them. There's no fun or profit dealing with crazy, lawsuit-happy deadbeats who don't pay their bills.
- Build a team of advisors with the skills to help you in a downturn. If you wait till the crisis hits, the "A" team may be working for the competition.

Above all else, you need to change your mindset. It's not all about the upside. Instead, protect what you've built. You can't succeed if you don't survive.

In the Great Recession, we were one bailout away from cooking our meals over campfires for a generation. Right now, Europe may be dipping its big toe into a recession. Britain is Brexiting. China is slowing. A lot of trade treaties are still up in the air. Who knows? Here in the U.S., it may be a long while before the next recession—the longer, the better.

It'll give you more time to prepare for winter.

Sincerely,

Jack Garson

## ABOUT JACK GARSON



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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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