10 Basic Guide Points for Loan Resolution Officers

Workouts are never pleasant, but these 10 tactics can help ease the pain.

BY LARRY SPROUSE

UNTIL WE DEVISE a way to prevent national and individual economic problems, repeal the law of unintended consequences, and make all lenders perfect judges of character, capacity, and capability, there will always be a need for bankers to switch hats and turn from lending to collecting. It matters not whether we call this area loan resolution, loan workout, collections, liquidation, or, my personal favorite, the "interesting loan" division. Their duties remain the same: Resuscitate when possible, litigate if absolutely necessary, and use all appropriate means to maximize the dollars recovered.

Although the officers assigned to this group come from a variety of backgrounds, the most successful ones have a few key qualities: experience in lending; persuasiveness; a strong dose of common sense; the courage to stand up to customers, attorneys, and even bank management; a certain level of creativity; and the ability and willingness to make unpleasant decisions.

My several decades of experience in this area may be of value to those just coming into such a group. These 10 guide points were gained from personal experience, fellow officers, numerous articles, a college roommate, and a host of other sources now forgotten. I apologize for not being able to give each of them the credit due, and I thank them for lessons learned.

1 Collect Money, Not Blood

As a workout officer, your responsibility is to collect the loan, not to get even. Never become emotionally involved. Never become truly angry versus just acting angry. Never threaten or demean or use language that would be embarrassing in a newspaper or liable in a courtroom, whether spoken in person or over the phone or placed in an e-mail or a desk file. Never, ever, ever!

Workout specialists exist in order to eliminate the emotional bond between the handling officer and the customer, a bond that frequently turns to anger when the loan weakens and becomes an embarrassment.

No matter how deeply the bank has been wronged, insulted, cheated, or lied to, your only responsibility is to collect the loan. If the borrower is a crook and you can prove it, the law will handle it. But remember, criminal action can never be threatened, and once the law steps in, collection can become even more difficult. Many a borrower sweats blood trying to repay a loan knowing that jail is a possibility, and hoping that everything will be viewed more leniently if a federally insured bank does not suffer a loss. His or her lawyer will explain this; you need not say a word.

2 Never Sue a Borrower Who Is Broke

Frequently, there is a strong desire to sue in order to punish or publicly mark the borrower. Who knows? He or she may inherit a fortune or win the lottery. But be careful and do not overreach. Suits lead to countersuits. The borrower may be broke, but the bank is not.

Several years ago, an article in *The Wall Street Journal* told of a jury that awarded a bank defendant $33 million, one-third of the bank's net worth. He had been sued by his bank to collect for the force-placed insurance it had put on a $9,000 auto loan.

Even if the judgment against the bank had been zero dollars, consider the money lost to attorneys and the wasted officer time. A few years ago, a local attorney sued on behalf of a bank and won a "perhaps someday" judgment for $75,000, but the attorney's fees were a hard cost to the bank of $67,000, and that was before the borrower countersued.

3 Never Hit a Tar Baby

For the handful of people who have read Joel Chandler Harris's stories of Uncle Remus or who are so old they actually saw Disney's *Song of the South*, no explanation is needed. For those who are younger than 60, the story is this: Brer Rabbit keeps avoiding capture by his two archenemies Brer Wolf and Brer Bear, so the two create a rabbit-resembling lure out of tar and place in on the Briar Patch path. When Brer Rabbit comes hopping along, he tries, neighborly like, to strike up a conversation with the "rabbit." No response. He tries again, with the same result. Finally, he gets angry at the tar rabbit's bad manners and hits it. Then, since he cannot remove his fist from the tar, he hits the target again, then kicks it twice. He is now trapped beyond redemption, and that's when Brer Wolf and Brer Bear step out onto the path.

Why foreclose on a hazardous waste site or sue the most obnoxious, snaky guy in four counties? Years ago, a bank I know of sued a guarantor who felt it was his right to protect his clearly crooked behavior. Before it was finally over, he had countersued every officer in the bank whose name he could spell and every lawyer and judge who ever touched the case, including several lawyers of his own. The bank would have loved to drop it, but could not.

4 Never Leap a Chasm in Two Jumps

If you must sue, or foreclose, or make demands, don't do it one note, one borrower, or one step at a time. Do it fast and hard. Workout is no place for the indecisive. A lot of money has been lost by moving with slow deliberation.

Figure out what you need to do, be sure it is the best of the available alternatives, and then take action. The most dangerous thing to do in a workout is to take a major step and then pause and rethink your actions or wait for a reaction. The standing rule of any hunting guide is as follows: If you are going to shoot a grizzly, an act that tends to make it mad, do it with a cannon. Do not wound the grizzly or just momentarily knock it out of commission. Accordingly, do not give an opponent the time or ammunition for a long and expensive court battle.

5 Never Play Leapfrog with a Unicorn

Every now and then you will find yourself in a room with someone who is clearly 10 or 20 times smarter than you are. Do not play with that person. Do not do anything that will prolong the relationship. Time is the ally of the brilliant. Be humble enough to admit (but only to yourself) the strengths of your opponent, decide quickly on the best possible path of action (be sure it is your best path, not your adversary's), and plod right down that path to its logical end. Your strength is in recognizing the other person's brilliance. That person's weakness is his or her confidence in it.

6 Act with Absolute Integrity and Support the Team

Never allow yourself or anyone who works with you to be sneaky, clever, or cute. Be totally courteous, be a complete lady or gentleman, be frank, be fair. Tell the customer what you are going to do and then do it without fail. If you say you are going to foreclose, or sue, or send in forensic accountants, do it. If you promise to renew if provided additional collateral, do it. Be sure you have all the authority you need to be able to perform as promised. You are an officer of the bank. What you promise, regardless of delegated authority, may be binding. Do not go beyond your authority, and be sure you are given either ample authority or very clear limits.

Several years ago, in a multibank loan workout, one bank was a continual roadblock to needed actions. The other banks found themselves wondering how many officers from the delaying bank it took to make a decision. It was definitely more than five because that bank had five officers in the room, but it was unclear if six would have been adequate or if their policies made the number indeterminable. Their delays were annoying, expensive, and demeaning to their bank.

7 Never Confuse a Calculator with a Law Book

Let lawyers do the lawyering, but don't let them do the banking. Talk to your attorney, trust your attorney, rely upon his or her knowledge of the law and the courts, but never let your lawyer make a business decision. Business decisions are your job.

Lawyers, even those with decades of business law experience, are not bankers. Business decisions are neither their job nor their area of expertise. Because they are so well schooled and frequently have decades of experience, there is a tendency to seek their advice on nonlegal matters. You have the calculator; they have the legal pad. These are different tools. There are times when very capable counsel will lead you down a path of minimal financial results and increase your risk.

As bankers, we believe in justice, we assume everyone is honest, and we even used to think a jury would understand and agree with our position. Lawsuits and courthouse time are good for attorneys. They are, however, rarely good for banks. To the attorney it is an exciting contest, a joust; to the bank it is expensive, time consuming, and reputation endangering. Don't confuse roles and responsibilities.

8 Everything Looks Better at 50 Feet

A good banker is a good clerk—someone who digs into the details. Somewhere, hopefully, there is a loan with perfect documentation. But that loan will never become a workout. Every workout loan has flaws in its documents. No exceptions. The flaws may weaken your claim on collateral, the priority of your claim, your ability to accelerate, to involve a consultant or accountant, or whatever.

The moment a loan is criticized, obtain its files (all of them) and read and organize every document. Study, compare, and thoroughly analyze everything—signing dates versus funding dates, signatures, the use of titles, expiration dates, promised collateral versus pledged collateral, and so on. If the documentation is complicated, have your lawyers do a second review, but do not shift the review responsibility to them. It is vital for you to know what the documents say and to be alert to any and all changes in your standard documents.

Look for the dumb but deadly item, such as a personal guarantee signed with a title or a "by" preceding the signature. Be sure the mortgage or deed of trust is on exactly the right property and not the lot next door. Was the collateral pledge filed with the correct agency and was it filed on time? Did all the possessory collateral get to the vault? Never trust anything you have not personally reviewed and verified.

9 Remember the British Comet

In 1954, a British Comet jetliner full of passengers disappeared in flight. A few weeks later a second Comet vanished. Following the grounding of all remaining aircraft, a microscopic examination revealed a new phenomenon: metal fatigue in the wings. The up and down movement of the wings gradually produced internal stress that was so small that neither the human eye nor existing standard technology could detect it. The resulting minuscule cracks eventually led to the wings breaking off in midflight—not a good thing at 40,000 feet.

Three rules should be followed carefully by workout officers and those who manage them:

1. Be sure the action plan is discussed regularly with management or other workout officers or with former workout officers who have no direct involvement with the credit. Create a true discussion atmosphere with minimal emotion and no fear of criticism.
2. Always have two officers involved in any relationship of size. (You define size for your bank.) Inevitably, one of them will catch a cold, be on vacation, or for any of a hundred other good reasons become unavailable when something needs to be done, approved, or reported. In addition, this practice is a great way to train a junior officer.
3. Never allow the same workout officer to lead a major credit for longer than two years. Mental and emotional fatigue is very real. Moreover, an officer of long standing can get to know management too well and stop handling the relationship with the appropriate degree of skepticism. It is hard to remove an experienced officer, but familiarity breeds contentment.

10 Use the Nordic Plunge

It is tempting to house the workout team near senior management or on the far wing of the loan platform, but don't. Workout customers tend to be in deep denial. They are much more receptive to tough actions and new solutions after they recognize the reality and magnitude of their problem.

Fortunately, less-than-honest borrowers are rare. Businesses can be damaged by many things that are only partially in management's control. Sometimes they grow beyond their capabilities and structure, but managements are generally honest and work hard to right the business and repay the debt. The bank's recovery will be enhanced by recognizing strengths, admitting that 20/20 hindsight is a given—and, regardless of legal or other actions needed, by treating owners and managers with the same respect accorded them when the loan was made. Should they get back on their feet, and many do, they will be your best and most vocal advertiser.

Move the workout team away from a view of the park, get rid of the mahogany furniture, and put them in the basement with indoor-outdoor carpeting, metal desks, and gray walls. Then, when workout customers come in to see their new officer, they will know immediately that they are not in Kansas anymore. ❖

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