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Urgent Items Business Owners Need to Know During Corona-Crisis

Tues, April 21

12:30pm • Via Zoom

RSVP: [DelrayBeach.com/events](https://www.delraybeach.com/events)

Free. Limited to the first 100 registrants.





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IF PLAN "A" DOESN'T
WORK, THERE ARE 25
MORE LETTERS IN
THE ALPHABET.



Preliminary Observations



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Dateline: Delray Beach, Florida (April 21, 2020)

By now, we are well into the Quarantine Period and Deep into the Business Disruption Event that has been the By-Product of the Spread of COVID-19/Coronavirus. This is a scary and unsettling environment for everyone.

At this point, many of us are (at least relatively) beginning to adjust to the “new (ab)normal” and focus on what this means to Us, our Families, our Businesses and our Community.

Together, we will Forge a Path Forward to Recovery.



Audience Assessment



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- **On a scale of 1 to 10, How Disruptive has the Coronavirus been to your Business?**
- **When would you be comfortable “re-opening the economy” – Now?; At the End of April?; At the End of May?**
- **How confident are you that your Business will recover within the next six months?**
- **How confident are you that the Economy will recover within the next six (6) months?**
- **Re-Opening: What is the impact to your business? What is the opportunity? What are the potential risks?**



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The challenges, actions, and outlook of small and mid-sized businesses

March 25-28, 2020

ADP asked 1000 small and mid-sized U.S. businesses what they're doing and what they need. Here's what they told us:

37% Small Business 46% Midsize Business

feel they won't be able to survive in the current state for more than another 3 months.

Note: 69% of respondents took the survey before the CARES Act was signed into law on March 27, 2020.

49% are considering or already began applying for SBA assistance.
77%

Business confidence that they know how to take advantage of government assistance:

31% small 33% small
 51% midsize 18% midsize

Top areas of assistance needed right now by businesses:

- Customers to go out of their way to support small businesses
- Tax relief/deferral
- Direct Government monetary assistance
- Information on how to help my business through the crisis
- Information on how to help my business through the crisis
- Tax relief/deferral
- Direct Government monetary assistance
- Government low interest business loans

CLOSED
 52% 43% are closed or have decreased their service and hours.

40% of small and mid-sized businesses think it'll take 3 months to get back to pre-coronavirus levels

Key challenges for businesses right now:

- Reduced Customers/Sales
- Cash Flow
- Employee's Fear
- Cash Flow

ADP is here to support businesses of all sizes during these times of uncertainty.

Businesses are adapting since the coronavirus outbreak:

	23%	17%	14%	11%
	35%	25%	26%	20%
	Changed the way we deliver our products/services	Providing virtual services	Redeployed employees to do different tasks than before	Expanding the services we offer

Visit our Employer Toolkit at adp.com/covid-19 for critical information and helpful resources on the CARES Act, FFCRA and much more.





7 Critical Items -- Anytime



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- **Funding and Cash Flow.**
- **Business Planning (Mission; Vision; Exit Strategy).**
- **Branding and Marketing.**
- **Legal and Compliance.**
- **Financial and Accounting.**
- **Systems & Operations/Human Resources.**
- **Insurance and Licenses.**



Current Action Items



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- **Don't Panic: Everyone is facing the same COVID-19 Health Crisis and Business Problems.**
- **Safety First: Your First Priority Should Be the Health and Safety of You and Your Family as well as Your Employees and Customers and Clients.**
- **Review Your Situation: Organize Your Legal, Financial & Insurance Documents and Schedule Meetings with Your Trusted Professionals—Attorney, CPA, & Insurance Agent.**
- **Identify and Continue Critical Business Operations and Services: Work to Minimize the Disruption to Operations and Minimize Immediate Damage and Loss.**



- **Conserve Cash & Plan for the Worst: This Applies to Your Individual and Business Finances.**
- **Use Technology to Remain Visible During Quarantine: Embrace Virtual Meetings and the Internet. Communicate with Clients, Customers, Colleagues and Friends. Network!**
- **Plan & Adjust: Focus on 30-60-90-120 Day Increments and Adjust as Necessary. Change is to be Anticipated.**



Assess Your Situation



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- **Budgeting and Cash Flow.**
- **Staffing and Payroll (including Payroll Protection Program).**
- **Retail or Wholesale Inventory and Supply-Chain Issues or Delivery of Business and/or Professional Services.**
- **Chain of Command and Support for Your Staff.**
- **What Can You Do To Help Your Customers?**
- **How Can You Be a Resource to the Community?**

Corporate Documents



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Forming a Business creates a separate and distinct entity and provides protection from Personal Liability. You need to maintain the Company to maintain that Protection.

Your Corporate Governance Documents should include:

- **Articles of Incorporation or Articles of Organization.**
- **Corporate Bylaws or Company Regulations.**
- **Organizational Minutes.**
- **Annual Reports.**
- **Stock/Membership Register**
- **Corporate Minutes.**





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Corporate Records help to substantiate the existence of your Business:

- **Provide Protection from Lawsuits and Creditors.**
- **Substantiate significant tax deductions, regardless of whether your business makes a profit. (Even if a Corporation or LLC does not make a Profit, it may still Generate Significant Tax Deductions for You on Your Personal Tax Return).**



Florida Annual Reports



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Each Year, You Must Update Your Corporate Records at www.SunBiz.org and Designate a Registered Agent to accept Service of Process and other Documents.

The Deadline to File Annual Reports has been extended from **May 1, 2020** to **June 30, 2020**.





Legal Documents You Need



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- **Business Plan.**
- **Formation Documents.**
- **Governing Documents.**
- **Contracts, Leases and Related Documents.**
- **Employment Manual, along with Employment/Independent Contractor Agreements, including Non-Disclosure, Non-Solicitation and Non-Compete Provisions.**
- **Buy-Sell Agreement (including “Key Man/Woman Insurance”).**
- **Website and Social Media Policies.**
- **Trademark/Copyright Registrations.**
- **Business Licenses and Permits.**



Business Operations



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- **Review Corporate Formation and Governance Documents and Ensure Compliance and Timely Filing (Annual Reports for 2020 now due June 30, 2020). **Maintaining Complete and Accurate Corporation, LLC, Partnership or Trust Records is an Easy Way to Protect Yourself from Personal Liability. Attorneys can help even if yours are incomplete or lost.****
- **Assess Overall Business Operations and Continuity.**
- **Address Employer/Employee Issues such as Furloughs, Terminations, and Overall Work Issues. Review and Update Employment Manual (including for Independent Contractors).**



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- **Review Contracts and Leases; determine practicality of performance and exculpation clauses.**
- **Review Business Interruption Insurance Policies and Document Losses, including, but not limited to, Timing; Business Metrics; New & Increased Expenses Incurred to Respond to Pandemic; and Specific Activity Related to the Interruption.**
- **Apply for Financial Assistance from Federal and State Government, Banks and/or Other Programs.**



Real Estate



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- **Review Lease and/or Mortgage with Respect to Business Property.**
- **Review Current Financial Obligations and Opportunities to Renegotiate Lease and/or Refinance Mortgage.**
- **Examine Force Majeure Clauses and Issues Involving Interruption of Services & Access.**
- **Advise on Eviction and Foreclosure Proceedings as applicable (and Moratoriums Regarding Same).**
- **Advise as to Loss Mitigation/Re-Negotiation Options and Impact on Individual and Business Finances and Credit.**



Notable Elements of Lease



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- **Rent and Other Charges.**
- **Identification of Leased Premises.**
- **Term.**
- **Security Deposit.**
- **Improvement Allowance.**
- **Use and Exclusivity Clause.**
- **Assignment and Subletting.**
- **Personal Guarantee.**
- **Renewal Option.**
- **Business Interruption Provisions.**
- **Requirements on End of Tenancy.**
- **Severability Clause.**
- **Termination and Damages Provision.**
- **Forum Selection and Venue.**



Notable Elements of Contract



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- **Official Names of Parties.**
- **Description of Rights and Obligations of Each Party.**
- **Description of Payment Obligations.**
- **Time Limits on Performance.**
- **Time Limits on Payment.**
- **Clear Language regarding Effective Date.**
- **Explicit Provisions to Support Conflict Resolution, including Prevailing Party Language.**
- **Business Interruption Provisions.**
- **Severability Clause.**
- **Termination and Damages Provision.**
- **Forum Selection and Venue.**

Insurance



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There are many types of Insurance for Your Business:

- **Professional Liability (Errors & Omissions).**
- **Commercial Property insurance.**
- **Workers' Compensation.**
- **Automobile.**
- **Product Liability.**
- **Business Interruption.**
- **Umbrella Policy on Your Homeowners' Insurance or Other Insurance Policy for Any Home-Based-Businesses.**



Employment Laws/Issues



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Employers Must Comply with the Provisions of the Following:

- Title VII of the Civil Rights Act.
- Family and Medical Leave Act (“FMLA”)
- Americans with Disabilities Act (“ADA”)
- Rehabilitation Act
- Genetic Information Nondiscrimination Act (“GINA”)
- Health Insurance Portability and Accountability Act (“HIPAA”)
- National Labor Relations Act (“NLRA”).
- **Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act (“CARES”).**



Employment Laws/Issues



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Employers Must Differentiate Between:

- **Full-Time Employees.**
- **Part-Time Employees.**
- **Independent Contractor.**

Businesses with On-Site Employees Need to be Mindful of Applicable Regulations Intended to Keep Their Employees and Customers Safe. Seek Guidance from the Occupational Safety and Health Administration (“OSHA”) and the Centers for Disease Control and Prevention (“CDC”) for those who want to be prepared for a return to the workplace when circumstances permit.



Intellectual Property



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With the internet and social media advertising exploding into a common marketing tool, you should take steps to :

- **Protect Your Intellectual Property: Trademarks; Copyrights; Name and Logo; and Service Marks.**
- **Understand Scope of “Work for Hire”**

As a Business Owner, you need to Identify and Protect Your Brand.



Website & Social Media



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- **Update Your Website to Reflect the Current Situation: Describe How You Intend to Work Remotely and Assist and Engage with Clients, Customers and the Community (or If that is not feasible, then Explain Why Not & Innovate; Sell Gift Cards and Products if possible).**
- **Ensure that Your Website is in Compliance with the Americans with Disabilities Act (ADA).**
- **Review Privacy Policies and Terms and Conditions.**
- **Engage Your Clients and Customers Via Timely and Useful Email; Post Updates to Social Media; Utilize On-Line Resources.**
- **Update Google Maps, Yelp, or Other Search Engines and Services.**



Business Financing



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- **Contact Your Existing Lender for Additional Capital and/or Renegotiation and/or Refinance of Existing Loans.**
- **Avoid Personal Guarantees.**
- **Explore Other Lending Sources, including special programs and grants (One Example: Facebook Grants (www.facebook.com/business/boost/grants)).**
- **Consider Seeking Equity Investors.**
- **Take Short Term Victories and Negotiate Again Later.**



Disaster Relief Financing



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There are various Federal and State Programs providing Disaster Relief Financing, as well as Private Loans and Grants:

- **Paycheck Protection Program: Part of the CARES Act, the PPP **was** a loan program designed to provide a direct incentive for small businesses to keep their workers on the payroll. SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities. You should consult with your local lender as to whether it is participating in the program. **As of April 15, 2020, the SBA Announced that the PPP had run out of money** (<https://tinyurl.com/PPPBankrupt>).**



- **EIDL Loans (including 10K Loan Advance):** In response to the Coronavirus Pandemic, small business owners in all 50 States, Washington D.C., and Territories are eligible to apply for an Economic Injury Disaster Loan (EIDL), including an advance of up to \$10K **(Now \$1K Per Employee)**.
- **SBA Express Bridge Loans:** Small businesses who currently have a business relationship with an SBA Express Lender can access up to \$25,000.00 quickly. This can be used to bridge the gap while applying for a direct SBA Economic Injury Disaster Loan. **The SBA Express Bridge Loan can be repaid in full or in part by proceeds from the EIDL loan.**



- **No More Money From the State of Florida!** Headline: Sun-Sentinel Reports that 37,000 Small Businesses Turned Away After Florida Closes Emergency Loan Program by Caroline Glenn & Steven Lemongello (Orlando Sentinel—April 14, 2020 at 5:42 PM): “Only a tiny percentage of the businesses that applied for assistance . . . will see any money, after the Florida [SBDC] . . .announced . . . that no more applications would be accepted or approved. The Department of Economic Opportunity . . . received more than 38,000 applications for the bridge loan and approved only 1,000 since . . . March 17.” More from: <https://tinyurl.com/vllkuy2>



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- **US Chamber Foundation: \$5,000.00 Grants to Companies with 3-20 Employees: <https://savesmallbusiness.com/>**
- **Facebook Grants Program for Companies with 2-50 Employees: <https://www.facebook.com/business/boost/grants>**



Negotiating with Vendors; Creditors; Landlords; and/or Lenders



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- **Review Applicable Contract; Lease and/or Loan Documents with Legal Counsel in Advance.**
- **Prepare List of Important Concessions You Need.**
- **Ask for Help and Communicate.**
- **Get New Deal in Writing.**
- **Take Short Term Victories and Negotiate Again Later.**



Bankruptcy (Last Resort)



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For a distressed business (or individuals), Bankruptcy is generally an option of last resort. It can be a valuable tool for Debtors to level the playing field with Creditors. But it comes with costs and risks.

The difficulty in this environment of uncertainty is that no business can make realistic projections of their future earnings. No industry is unaffected. Nearly every industry is suffering now. But the smart strategy is to start planning ahead.

Distressed business leaders should begin working with experienced Bankruptcy Professionals now to start evaluating options and preparing for that moment, hopefully soon, when we have some better vision to our Economic Future.



Bankruptcy: Webinar 5/12/20



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- **Chapter 7: Liquidation Option for Individuals and Businesses where you keep Exempt Assets and Surrender Non-Exempt Assets for Liquidation with Monies to be Distributed to Creditors. The Discharge of Debts applies only to Individual Chapter 7 Debtors.**
- **Chapter 11: Restructuring Option for Businesses (and Individuals whose Assets & Liabilities Exceed the Chapter 13 Limits). There are New Provisions to Streamline the Process for “Small Business Debtors”.**
- **Chapter 13: Restructuring Option Available to Individuals Only. You keep your Assets and Make Monthly Payments Over a 3-5 Year Period.**



Wills and Other Documents



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While Not Directly Related to Your Business, You Should Use this Opportunity to Review and Update the Following:

- **Estate Documents: Will and/or Trust.**
- **Health Care Surrogate Forms.**
- **Living Will.**
- **Power of Attorney.**
- **Medical Power of Attorney for Minor Children.**

Also Make Sure that Your Adult, Unmarried Children Have Their Documents in Order. Failure to do so could make it Difficult for You to help them in an Emergency.



Plan for the Future



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- **Update Your Disaster Recovery, Business Continuity, and Crisis Communication Plans (Hurricane Season and More)**
- **Assess Your Business Resumption Process and Procedures.**
- **Update Telecommuting, Disaster Response, and Crisis Communications Policies and Procedures.**
- **Update Your Risk Profile and Mitigation Plan.**
- **Review Your Insurance Policies, including Business Interruption Insurance Plans.**
- **Edit and Update Your Business Plan.**



Concluding Thoughts



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- **COVID-19 is going to have Significant, Sweeping Impact on Our Lives and Our Businesses.**
- **Businesses will need to be Adjust to these Health Challenges and Societal Concerns.**
- **Social Distancing; Telecommuting; and Virtual Meetings Will Be Part of Our Vocabulary and Lifestyle for a Significant Time.**
- **Second Wave in Dec. 2020? (<https://tinyurl.com/tyjfp32>)**
- **Consulting with Professionals Can Save Time and Money Going-Forward.**



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Ronald Scott Kaniuk, Esq.



KANIUK LAW OFFICE, P.A.

- Attorney with Nearly Twenty-Five (25) Years' Experience.
- Former Law Clerk to U.S. Bankruptcy Judge Marvin A. Holland (EDNY-Retired).
- Licensed to Practice in State Courts of Florida, New York and New Jersey and Multiple U.S. Federal Courts.
- Double-Degree Graduate of **St. John's University School of Law** (Queens, NY): Law Degree (1996) and LL.M. (Master of Laws) in Bankruptcy (2002).
- Proud Graduate of **Northwestern University** (Evanston, IL).
- Member of Board of Directors and Executive Committee (Vice Chair of Legal & Governance) for the **Greater Delray Beach Chamber of Commerce**.
- Former HOA President and Board Member.
- Married (18 Years) with Three (3) Children.





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Kaniuk Law Office, P.A. is Law Firm Focused on Helping **Individuals** and **Small Businesses**, with their **Legal Issues**, including, but not limited to, the following:

- Consumer Law.
- Bankruptcy—Debtor and Creditors' Rights.
- Business and Corporate Law.
- Real Estate (Residential and Commercial).
- Urgent Disaster Relief Issues.



Disclaimer



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- **This Presentation is meant to provide an Overview of Issues that a Business Owner May Face, during and after this COVID-19 Pandemic. Much of the information, especially with regard to COVID-19 Financial Relief Opportunities, is Subject to Change Without Notice.**
- **Attendees should contact an Attorney Regarding Specific Legal Issues Addressed Herein, or Other Legal Questions that they may have.**
- **This Presentation may not be modified without permission from Ronald Scott Kaniuk, Esq. The Delray Chamber may distribute this Presentation subject to the foregoing.**



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Thank You For Attending!

Ronald Scott Kaniuk, Esq.

Kaniuk Law Office, P.A.

561-292-2127

ron@kaniuklawoffice.com

www.kaniuklawoffice.com