

VITA PLUS CUSTOM HARVESTER MEETING: GETTING PAID FOR YOUR WORK

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A LITTLE BIT ABOUT ME....

- Celebrated 35 years as Krekeler Law this year
- I am a debt problem solver
- I assist mediators for the Department of Ag and serve on the Department's Advisory Council
- I like to take complicated matters that other firms won't
- I work with the Wisconsin Farm Center

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▶ The Only Thing You Need to Know

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3

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Sun Tzu



544-496 B.C.
CHINESE GENERAL, MILITARY, STRATEGIST, AND PHILOSOPHER

~ AUTHOR OF THE ART OF WAR

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4

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▶ *“The art of war is of vital importance to the state. It is a matter of life and death, a road either to safety or to ruin. Hence it is a subject of inquiry which can on no account be neglected.”*

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5



The general who wins the battle makes many calculations in his temple before the battle is fought. The general who loses makes but few calculations beforehand.

(Sun Tzu)

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6

**“If you know the enemy
and
you need not fear
the result of a
hundred battles.”**

~ Sun Tzu



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KNOWLEDGE

Names

Social Security Number

Addresses

Bank Accounts

Personal Financial Statements

Assets

Liens

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- ▶ Information gathered before entering a contract can assist in collections down the line and provide means of ensuring protection

Ask the correct questions on a credit application

1. Who is the applicant – an individual, or a business entity?
2. Are there prospective guarantors?
3. What is the applicant's current financial situation?
4. What collateral might be available to secure or satisfy the debt?
5. Social Security Number

BEFORE ENTERING A CONTRACT

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9

- ▶ In Wisconsin, CCAP (<https://wcca.wicourts.gov/index.xsl>) is a blessing. If you know the proper party to search, you can see if there are active legal proceedings against your debtor party or prior judgments.
- ▶ Should you request access to a credit report to verify financial information and identify any bankruptcies and judgments?
- ▶ Use services like Dun & Bradstreet to investigate risk of new customers

PUBLIC INFORMATION

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10

The art of war teaches us to rely not on the likelihood of the enemy's not coming, but on our own readiness to receive him; not on the chance of his not attacking, but rather on the fact that we have made our position unassailable.

Sun Tzu



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Have a Contract!

Types of Contracts

- **Written** 
- **Verbal** 



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▶ Contract Items to Include or Discuss

1. Methods of Payment (acre vs hour)
2. Payment Schedule (bonus or incentive for payments)
3. Who the debtor is (individual/entity)
4. Guarantor
5. Identification of collateral/granting of security interest
6. Responsibility for providing supplies, labor, and equipment
7. Anticipated schedule of work
8. How delays will be handled
9. Interest charges
10. Attorney's fees and costs of collection

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13

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- ▶ Section 422.210 "Agricultural credit transactions" states that "With respect to a credit transaction that is primarily for an agricultural purpose, a creditor may not charge, collect or receive any finance charge or fee unless the charge or fee is clearly disclosed in writing to the customer and that is agreed to by the creditor and the customer."

INTEREST

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14

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- ▶ Step 1: Create or grant the security interest
- ▶ Step 2: Ensure the security interest attaches to the underlying asset
- ▶ Step 3: Perfect the lien to make it effective against third parties

GETTING A LIEN **(Do Not Try This At Home!)**

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- ▶ Wisconsin statute 409.1035 allows for a lien to be granted that supersedes any previously granted liens on crops.
- ▶ New obligation incurred with respect to production of crops
- ▶ Filing should identify statute or term "Production-money security interest", the crops, and specific liens to be superseded in priority.

PRODUCTION-MONEY SECURITY INTEREST

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16

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- ▶ Another party promises to pay in event debtor is unable. Joint and several liability between debtor and guarantor(s).
- ▶ Critical for a creditor if debtor is a limited liability company (LLC), a limited partnership, or a corporation attempting to limit the liability of the debtor
- ▶ Creditor should ensure the guarantor has sufficient income or assets to pay in the event of a default. A shell company or uncollectable individual is not useful as a guarantor.

PERSONAL GUARANTY

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17

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He will win who knows when
 to fight and when not to fight.

Sun Tzu

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18

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- ▶ Following a judgment, a creditor can serve an Order for Financial Disclosure (Wisconsin forms SC-506A and 506B)
- ▶ Supplemental examination of the debtor to identify assets that can satisfy the judgment.

HOW TO COLLECT

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19

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- ▶ Wages
- ▶ Bank Accounts
- ▶ Amounts owed

- ▶ Know your State's Exemption Limits
 - ▶ In Wisconsin, Debtors are allowed to exempt \$5,000 per person in depository accounts

GARNISHMENTS

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20

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- ▶ If the debtor files for bankruptcy relief, the bankruptcy should never be ignored. Speak with an attorney whose practice involves bankruptcy law and creditor's rights.
- ▶ Available remedies will depend on the chapter of bankruptcy (7, 11, 12, or 13) and your status as a secured or unsecured creditor.

WHAT HAPPENS IF THE DEBTOR FILES FOR BANKRUPTCY?

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- ▶ Chapter 7 – liquidation, but in the overwhelming majority of cases, there are no assets available for creditors
- ▶ Chapter 11 – A reorganization available for individuals and business entities. Usually more expensive than other reorganizations. The debtor typically stays in possession of his/her/its assets, but creditors likely to get at least some payment
- ▶ Chapter 12 – Family Farm; usually very little to unsecured creditors
- ▶ Chapter 13 – For Individuals; 3-5 year payment plan. Usually some divided to unsecured creditors

BANKRUPTCY BASICS

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22

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- ▶ Bankruptcy is usually filed for one of 2 reasons

- ▶ 1. Eliminate Debt
- ▶ 2. Automatic Stay-prevents certain actions while the bankruptcy is ongoing

- ▶ Do not violate the automatic stay

HOW BANKRUPTCY IMPACTS COLLECTIONS

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23

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*“OPPORTUNITIES MULTIPLY AS
THEY ARE SEIZED”*

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24

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THANK YOU

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