

KREKELER

LAW REPORT



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WE'RE HIRING!

We're growing and now accepting application materials for the following positions.

Please send cover letter/resume via email to kkelm@ks-lawfirm.com.

- Bankruptcy Attorney
- Litigation Attorney
- Marketing Specialist/Client Support
- Collections Assistant

GRADUATION COST SAVINGS

The last term paper's turned in, the cap and gown have been purchased, and of course, you want to celebrate – your high school or college graduate's worked hard and is moving on to new things!

But be aware and budget accordingly. The National Retail Federation found 2018 total graduation spending reached \$5.2 billion. Like spending for any holiday, set a budget of approximate costs, which will help you stay in the range of your goals.

If you're attending or planning a party, we've got some tips for you.

Talk with your graduate. Chances are, they just want a normal day with their friends without going over the top. Parties can range anywhere from \$100 to a few thousand but according to GraduationParty.com, the average cost is just under \$1,000.

Invite right. Grab email addresses from your graduate and send an email invitation through Evite.com, Minted.com, or another vendor.

Or, if your graduate is friends with most of the guests on Facebook, it's common to set up an event there and add people. If you like the feel of print, there are many Word invitation templates to choose from.

Co-host. If you've been friends with like-minded parents throughout your child's senior year, team up and co-host a party to split the costs. My next door neighbor did this and it worked well.

Brainstorm location. Host the party at home or at an affordable location. Many people set up tables in their garage, but you can also host an appetizer open house in the mid-afternoon to save on food costs. Senior centers, churches, public parks, and restaurants all rent event rooms for low or no cost.

Cut excess. Consider cutting items like party favors, photography and videography, and expensive catering. Many parties can serve a homemade taco lunch, Subway party subs, or Chick-fil-A items. Use your creativity and incorporate your grad's favorite foods.

Gift well. Cash is the most popular gift. According to a [2018 National Retail Federation survey](#), over 55% of people plan to give it. The appropriate amount for a monetary gift? Most resources agree that it depends on how well you know the graduate, but \$20-\$100 is a good range.

***Congratulations to all the graduates,
and here's to what's next in life!***

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LUKAS TROW, Commercial Banker: ADVICE for BUSINESS

Lukas Trow started his career at the bottom. He began as a teller and has worked at almost every position during his banking career. He is now Assistant Vice President of Commercial Lending at McFarland State Bank.

This spring we met with Lukas to draw upon some of that experience and expertise.

Question: What is the most common problem you see in small businesses?

Trow: One of them would be receivables management. Many business owners are just too easy-going when it comes to extending credit and collecting when that money is due. Business owners need to realize that they are borrowing money at a cost to them. When they extend credit, they must follow up and get paid or they incur a double cost -- the loss of revenue and the cost of the funds borrowed.

Another common problem is the failure to stay on top of tax deposits. Quarterly tax estimates should be made timely. The tax authorities are not very vigilant and do not have their hand out every week for their money. It sometimes becomes easy to skip a tax payment or two, but that will result in serious difficulty later.

Question: Do you have some advice for small businesses?

Trow: Most businesses should constantly be looking at minimizing their expenses. I recently had a customer who was spending \$500-600 a year to have Sirius XM radio playing in the shop. That money could have been saved by simply having ordinary AM/FM radio playing.

Businesses should review their budgets regularly. They should do so with an eye to looking at what expenses can be cut or reduced.

Another problem we see with businesses is the failure to keep good records. Far too many small business owners mix the business money with their personal monies. This makes it difficult to analyze the budget and the expenses. It can also cost the business more when it comes time to prepare tax returns.

Question: A lot of my clients are involved in or considering bankruptcy of one sort or another. Most of them are very concerned about their credit and credit score. Do you have any advice or observations about this?

Trow: We as bankers look at the reason for the bankruptcy. There is a big difference between a debtor

who files bankruptcy because of extravagant or wasteful spending, and a debtor who had a business which encountered market difficulties. I started in banking at a time which most people would think was terrible, right before the 2008 recession. But that has enabled me to see and understand how many businesses encountered problems beyond their control. The falling prices of land could be enough back then to put a real estate developer out of business. That did not mean that the developer was not a good business person.

Question: What advice would you give for someone to re-build credit after bankruptcy?

Trow: Pay all of your new bills on time. Be prepared to wait two or three years before you will be able to obtain significant amounts of credit, such as a home mortgage. It is possible for someone to obtain a mortgage loan after a recent bankruptcy. Most of the time these loans will be an in-house type product. Then down the road the loan can be refinanced into a fixed rate type product.

We also have offered credit-builder loans. With that program the borrower places funds into a savings account or certificate of deposit as collateral. The borrower makes the payments on the loan and the account or CD is released when the loan is paid. This can be an excellent way to increase a credit score after bankruptcy.

The most important aspect, though, is to maintain good communications with your lender or banker. We as bankers can do much more to help if communication lines are always open.

We agree with Lukas, particularly with respect to the communication. We generally are willing to provide our clients' lenders with any reasonable information they would like. We find it is far easier to achieve goals cooperatively than by any other means.

Finally, I want to add a personal word about Lukas. He has been my personal commercial banker and has gone out of his way to make things easy for me to do business with McFarland State Bank. A few months ago, my loan matured, and I needed to sign the refinance documents on a day when I was extremely busy in my own office. Lukas made the trip from McFarland to Madison to stop at my office, so I could take care of things with only a few minutes interruption.

Lukas Trow can be reached at (608) 838-5040 or ltrow@msbonline.com.

HIDDEN TAXES FROM DEBT SETTLEMENT

Last month I had the honor and privilege of giving a presentation to Wisconsin lawyers at the 2019 Northwestern Wisconsin Bankruptcy Institute. The topic: tax consequences of cancellation of debt income.

Our clients are always resolving debt issues. Often, they want to try and settle their debts rather than file bankruptcy. Settlements and debt forgiveness sound good, and often can be, but the tax consequences must be considered.

Debts that are forgiven are generally treated as ordinary income. It is as though you received a large commission or gambling win without any withholding.

The Internal Revenue Code specifically provides that gross income includes "income from discharge of indebtedness." IRC §61(a)(12).

Fortunately, there are some exceptions to having to recognize income from debt forgiveness. The two most common exclusions are **bankruptcy and insolvency**.

Debts discharged in bankruptcy are not taxed. **This is why bankruptcy is sometimes a better option than debt settlements.** At the NW Bankruptcy Institute, I gave an example of a case I had dealt with several years ago. My client was closing his business. In return for his cooperation in surrendering the business assets the bank was willing to forgive a debt of about \$300,000.

We said "no, thanks." We would cooperate with the surrender of collateral but only if the bank would NOT forgive the debt. The debt forgiveness would have resulted in about \$115,000 in taxes for my client. Those taxes could not be discharged in bankruptcy.

The client therefore opted to file a bankruptcy to eliminate the bank debt, rather than end up owing the IRS an amount he would be unable to pay.

The other most common exception to recognizing income from debt forgiveness is insolvency. If the debtor is insolvent both before and after the debt forgiveness there will be no cancellation of debt income. If the debtor is insolvent before debt forgiveness but solvent after, the debtor will recognize income to the amount by which he is solvent after the debt is forgiven.

The determination of insolvency is based on the debtor's liabilities and assets. Those assets include exempt assets. Debtors need to be taking into account such things as retirement accounts and cash value life insurance.

There are other exclusions, and the NW Bankruptcy Institute went into far more detail. I had the benefit and honor of working with Attorney Jim McNeilly from the Wisconsin Department of Revenue and Attorney Jim Block from Wausau. Both are knowledgeable practitioners with lots of experience on these topics.

Let us know if you have tax questions related to debts, and we will try to answer them.



**SOLVING
LENDER DISPUTE?**

**PICK UP
THE PHONE**

The tension between the clients and their secured lender's loan officer can grow drastically when both are feeling the pressure of resolving problems related to cash flow and non-payment. A recent case reminded me of how picking up the phone and contacting the lender's attorney can be the most cost-effective way of handling the clients' dispute with their lender.

In my recent situation, the clients had loans with a bank that were guaranteed by Farm Service Agency (FSA). In speaking with the bank's attorney and the FSA officer, we learned more specifically what loan terms both entities were willing to accept. That knowledge was very important to the bank since it did not feel it could make any decisions about how it might refinance or re-amortize our clients' debt without FSA's approval. Having that open discussion with the bank, FSA, and counsel, helped us craft a proposal to make that would be acceptable to both entities. It also gave us the insight necessary to prepare the cash flow that the bank and FSA would require from our clients to be convinced that re-amortizing the loans made sense and the clients would be able to afford re-amortized loan payments.

The anxiety felt by our clients and the loan officer reduced dramatically, and that further assisted us in negotiating a restructure that was acceptable to all and helped re-build the relationship between the clients and their bank.

I know that in this day and age we e-mail and text, but sometimes that personal touch of actually talking to someone gets more done. We believe in getting things done for our clients and are not afraid to pick up the phone to do that.

– Attorney Kris Sederholm

WHERE'S KREKELER ?



Attorney John Driscoll is completing a one-year term as vice chair of the Western District Bankruptcy Bar Association of Wisconsin.

The Western District Bankruptcy Bar Association serves as a liaison among the Court, legal professionals, and the

public and provides continuing education. John was responsible for planning attorney programs. John will next serve as chair.

Here's a list of topics the Western District Bankruptcy Bar discussed this year:

September: The Debtor's Attorney-Client Privilege

October: A Guide to Wisconsin Business Entities: What Bankruptcy Practitioners Should Know

November: Perfect Security Interests in Common and Uncommon Collateral

December: The Next Recession? (Discussed a potentially imminent recession and how it may affect the bankruptcy world)

January: Recent Cases of Note and a Goodbye from the Bench

February: Duties upon Terminating the Lawyer-Client Relationship

March: These Issues Are Coming for Us – Cryptocurrency and Marijuana

April: How to Write Something a Judge Will Want to Read

May: David Espin – Common Issues in Single Asset Real Estate Cases

Contact us if you'd like information on any of these topics.

David spoke at the **Wisconsin Association of County Corporation Counsel**, representing attorneys from each county in the state in the county's legal issues. David's presentation touched on bankruptcy procedure, discharge of property taxes, proofs of claim and other issues that the attorneys see when representing their counties. Please contact us if you have questions or would like more information about the presentation.

Law Practice Management Discussion Group. Krekeler Strother is partnering with the State Bar of Wisconsin and WILMIC to host monthly brown bag informational sessions for attorneys. (Sometimes, there are cookies!) This month we hosted a group of local attorneys to chat about fee sharing arrangements, diversity, and the difference between an equity and a revenue sharing partner. David is working on hiring a bankruptcy attorney and a litigation attorney, and got some good ideas. The next meeting will be held June 20 at the WILMIC office.



Have a question? Idea for a future article?

If you ask for it – we will write it!

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