



# NAVIGATING ROUGH SEAS

*Event Planning Strategies for the "New Normal" Virtual Mini-Conference*

## "Steering Through Uncharted Waters"

JUNE 11th • 10AM



**SPEAKER: Ronald Scott Kaniuk, Attorney**

Navigating the legal aspects of government funding, including SBA and PPP plans and fulfillment. Legal issues for non-profits, and small business during trying times.



# Where We Are (6/11/2020)

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It has been **three (3) months** since NBA Star Rudy Gobert tested positive for Coronavirus, resulting in the immediate suspension of the 2019-20 NBA Season, and signaling the start of America's COVID-19 Quarantine. In the days that followed, America (and the world) came to a halt.

Examples: Pro Sports Suspended; NCAA Basketball Tournament Cancelled; Disney World Closed; Shelter-in-Place Rules and Quarantine; Work From Home Becomes the Norm; and Massive Unemployment (**Today's Report: 1.5 Million Filed Unemployment Claims Last Week; 3 Month Total is 43 Million Unemployed**).

# Where We Going 1 of 2 (6/11/2020)

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Only now are we starting to emerge from Quarantine and Isolation, but many questions remain.

How all of this will affect Us, Our Families, Our Neighbors, Our Businesses and Our Lifestyles remain Unknown. It is certainly “Uncharted Waters” but we are facing these challenges  
#AloneTogether.

Recommended Reading: “11 Hypotheses on How Life May Change in a Post Pandemic World” at <https://uxdesign.cc/11-hypotheses-on-how-life-may-change-in-a-post-pandemic-world-ce3738278429>

# **Where We Going 2 of 2 (6/11/2020)**

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- 1. Personal Hygiene**
- 2. Education**
- 3. Perception of Space and Architecture**
- 4. More Communication for More Uses**
- 5. Supply Chains**
- 6. Mobility**
- 7. Workplace Environment (and Work from Home)**
- 8. Stress Relievers**
- 9. Focus on Joy**
- 10. Time Heals Wounds and Makes Us Forget**
- 11. Loving Kindness and Emotions Endure**

# Small Business Statistics

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**Florida is a BIG Small Business State:**

- **There are more than 2.5 Million Small Businesses in Florida (556,089 are Small Business Employers).**
- **88% of All Employer Businesses are Small Businesses with Fewer Than 20 Employees.**
- **Small Businesses Comprise 99.8% of All Businesses in the State.**
- **Florida's Small Businesses Employed 3.4 Million People (representing 41.6% of all Private Sector Employees)**

# Non-Profit Statistics

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- **Over 1.3 Million Non-Profit Organizations in USA.**
- **Terms “Non-Profit” and “Tax-Exempt” are often used Interchangeably.**
- **More than 3 Dozen Types of Tax-Exempt Organizations, like**
  - **501(c)(3) – Religious, Charitable, Scientific, Literary or Educational.**
  - **501(c)(4) – Social Welfare (including HOA’s).**
  - **501(c)(6) - Chambers of Commerce.**
- **Non-Profit Does Not Mean No Profits (Only Means No Individual/Stock Ownership and No Payment of Profits).**

# Crisis Response 1 of 2

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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, Customers and Clients.**
- **Review Your Situation: Organize Your Legal, Financial & Insurance Documents and Schedule Meetings with Your Trusted Professionals—Attorney, CPA, & Insurance Agent.**

# Crisis Response 2 of 2

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- **Identify and Continue Critical Business Operations and Services: Work to Minimize the Disruption to Operations and Minimize Immediate Damage.**
- **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.**



# Maintain Your Corporate Form

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**Forming a Business (whether it be a Corporation, Partnership, Limited Liability Company or Non-Profit) creates a separate and distinct entity and provides protection from Personal Liability. 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).**

# Corporate Governance Documents

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

# Annual Reports Due June 30, 2020

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Each Year, You Must Update Your Corporate Records at [www.SunBiz.org](http://www.SunBiz.org) and Designate a Registered Agent to accept Service of Process and other Documents.

Normally, Annual Reports are due on or before **May 1 of Each Year**.

This Year, due to COVID-19, the Deadline was extended to **June 30, 2020**.

Failure to File Before the Deadline Puts Your Company at Risk of Dissolution and Subjects it to Penalties and Fines.

# **Additional Requirements for Non-Profits**

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- **IRS Requirements**
  - **Dissolution Clause;**
  - **No Political Activity; and**
  - **Exempt Purpose.**
  
- **Florida Rules**
  - **Founder (Not “Owner”);**
  - **Registered Agent Required (like any other Company);**
  - **Physical Location Required; and**
  - **Solicitation License.**

# Special Issues for Non-Profits

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- **Need Independent Board of Directors which hires President/CEO or Executive Director, who in turn hires and oversees staff and organization.**
- **Small Boards Risk Exempt Status if they are too insular (you don't want just a Family running a Charity).**
- **Strict Requirements for Solicitation of Funds.**
- **Disclosure and Transparency are essential to Good Governance.**
- **Non-Profits Subject to Investigation by Federal (IRS) and State Governments.**

# Protecting Your Business 1 of 2

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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).

# Protecting Your Business 2 of 2

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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, State, Local Governments, Banks and/or Other Programs.**

# Insurance Coverage

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There are many types of Insurance for Your Company:

- **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.**



# Applicable Employment Laws

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- Civil Rights Act of 1964 (Title VII).
- Family and Medical Leave Act (FMLA).
- Americans with Disabilities Act (ADA).
- Rehabilitation Act of 1973 (Rehab 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 Law 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.**

# Protect Intellectual Property

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- **Does Your Website Include Up-to-Date Legal Terms and Policies and is it ADA Compliant?**
- **Have You Registered Trademarks for Your Business Name and Logo?**
- **Have You Registered Copyrights for Your Visual Content?**
- **Have You Filed Patents for Your Inventive Processes and Products?**
- **Do You Understand Scope of “Work for Hire” and Have Agreements with Third-Party Developers and Vendors?**

# **CARES Act and PPP Program**

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**The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress with overwhelming, bi-partisan support and signed into law on March 27, 2020.**

**The Paycheck Protection Program (PPP), as part of the CARES Act, aimed to provide qualifying Small Businesses, Non-Profit Organizations, Veterans' Organizations, Tribal Businesses, Sole Proprietors, and Independent Contractors with forgivable loans of up to \$10 Million.**

# PPP Changes (June 3, 2020)

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- **Extends Period in Which Loans Can Be Forgiven.**
- **Extends Loan Forgiveness Period.**
- **Provides Forgiveness Exceptions for Not Restoring Pre-Coronavirus Employment Levels.**
- **Decreases Threshold for Use of Funds for Payroll.**
- **Extends Loan Terms for Non-Forgivable Amounts.**

# Payroll Protection Program

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- **Qualified small business can borrow up to the lesser of: (A) 2.5 times of average monthly payroll costs OR (B) \$10 million**
- **Loan Terms: 5 years at 1% Interest Rate, but eligible for forgiveness when loan proceeds used for payroll and other allowable expenses.**
- **Eligible for Loan Forgiveness (i.e. does not have to repaid) IF 60% or more of loan proceeds used to maintain full-time equivalent staff on payroll, with no more than 40% or less for other allowable operating expenses.**

# PPP Expenses Eligible For Forgiveness

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- **60% or More Applicable to Payroll costs (Salaries, wages, commissions, or tips) with \$100,000 Max Per Employee (Gross Earnings)**
- **40% or Less Applicable to Interest on Mortgages (Loans incurred before February 15, 2020); Commercial Property Rent (Leases entered Into Before February 15, 2020); and Utilities (Same 2/15/2020 Deadline).**

# PPP Qualified Payroll 1 of 2

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- **Cash compensation includes gross salary, wages, gross tips, gross commissions, overtime, paid leave (excludes FFCRA leave), allowance for dismissal or separation and bonuses.**
- **The total for each individual employee may not exceed \$15,385.00 for the covered period (\$100,000.00 pro-rated)**
- **Any amounts paid to owners (owner-employees, a self-employed individual, or general partners) are capped at \$15,385.00 or the 24-week equivalent of their applicable compensation in 2019, whichever is lower.**



# PPP Qualified Payroll 2 of 2

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- **Other Payroll Costs: Employer Contributions for Employee Health Insurance, including Employer Contributions to an Employer-sponsored Group Health Plans, including Dental & Vision; Employer contributions to Employee Retirement Plans; and Employer State and Local Payroll Taxes.**
- **Workers Compensation and Federal Taxes are NOT Included.**

# PPP Real & Personal Property

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- **Personal property items, such as copiers, servers, autos, and other common items of personal property that are leased by the business can be included in non-payroll costs that may be forgiven.**
- **Interest paid on real and personal property, including equipment, autos, etc. can be forgiven.**

# PPP Time Period Flexibility

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- **Covered Period:** Starts when the SBA Lender makes first PPP loan disbursement. From that date, you have twenty-four (24) weeks to make Eligible Payments.
- **New Alternative Period:** Borrowers may now opt to begin their period on the First Day of their First Pay Period after receiving First Loan Disbursement.

**Practice Tip:** If you can, open New Payroll Account for PPP Loan Proceeds and Disbursements.

# PPP Forgiveness Tied to Employee Count

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**Keep Your Employee Headcount Up: The Amount of PPP Loan that is Eligible for Forgiveness will be Reduced if the Borrower Decreases its' Full Time Employees (FTE). The Reduction Percentage is determined by:**

**Average number of FTEs during the covered period divided by either:**

- **Option A: February 15, 2019 – June 30, 2019 or**
- **Option B: January 1, 2020 – February 29, 2020**

**(Seasonal Businesses must use Option A).**

# PPP Headcount Exceptions

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**SBA will now allow for exceptions in workforce reductions for:**

- **An employee who was fired for cause**
- **An employee who voluntarily resigned**
- **An employee who voluntarily requested and received a reduction in hours**
- **An employees who declined a rehire offer**

**Documentation Key: Written, not verbal communication.**

**Only allowed to claim this individual if position was not filled by new employee.**

# PPP Safe Harbor

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- **If you Laid-Off or Furloughed Employees, you must bring them back onto your payroll so that your headcount reflects what it was when you applied for the PPP Loan.**
- **If you Decreased your number of Full Time Employees between February 15, 2020 and April 26, 2020, you can qualify for FTE Reduction Safe Harbor if you restore FTE levels by December 31, 2020.**

# PPP Forgiveness Tied to Wages

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- For the covered period, you need to pay employees at least 75% of their average wage rate from January 1 through March 31.
- Any amount of wages reduced in excess of 25% per employee will not be forgiven.
- You have until December 31, 2020 to eliminate reductions in excess of 25%

# PPP Self-Employed Payroll Cap

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- **There is a limitation on owner employees and self-employed payroll forgiveness.**
- **Lesser of \$15,385 or the 24-week equivalent of their 2019 compensation.**
- **Non-cash compensation for owners is excluded (effectively removing health insurance, retirement benefits, and employer paid state and local unemployment compensation taxes).**
- **Updated guidance clarifies that self-employed cannot claim entire PPP as income replacement.**



# PPP and SBA Review

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- **May 13 Treasury FAQ provides a “safe harbor” for all loans under \$2 million, deeming them made in “good faith”.**
- **SBA can review all loans to determine eligibility and accurate calculations for forgiveness.**
- **Borrowers must retain their PPP documents for at least six years after the date the loan is forgiven or paid in full.**

# PPP Forgiveness Timeline

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- **Once you file an application for forgiveness with your PPP lender, they will take 60 days to review and let you know forgiveness amount.**
- **Bank will then notify SBA of the amount and SBA will have 90 days to approve.**

# PPP Tips for Maximizing Forgiveness

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**Remember the PPP's Purpose was to Preserve Employee Salaries During the Pandemic and Quarantine. To maximize your Potential PPP Loan Forgiveness:**

- **Make sure you're not reducing the number of FTEs or equivalents or their wages.**
- **Make adjustments to avoid reduction penalties.**
- **Ensure what's left over is spent only on approved overhead expenses.**

# PPP Statistics

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- **Approved Loans**
  - **Nationwide: 4,475,599 (receiving \$510,234,498,923.00)**
  - **Florida: 343,442 Loans (representing 7.67% of all Loans and receiving \$30,512,350,550.00, representing 5.98% of Loan Funding)**
- **Average Florida PPP Loan totaled \$88,843.00.**

# Financial Problems Beyond PPP?

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There are ways to Negotiate with Your Bank, Landlord, Creditors and Vendors:

- **Consult with Professionals and Develop a Strategy and Plan.**
- **Be Honest and Ask For Help.**
- **Accept Short-Term Victories and Be Prepared to Re-Negotiate.**

# Bankruptcy – A 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 their options.

# Bankruptcy Basics

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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.**

# Plan For the Future

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- **Update Your Disaster Recovery, Business Continuity, and Crisis Communication Plans (for **Hurricane Season and Beyond**)**
- **Assess Your Business Resumption Process and Procedures (if you haven't done so already, Create a "COVID-19 Back-to-Work Plan").**
- **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**. These are "Uncharted Waters".
- 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.
- Is Second Wave Coming?
- What kind of Economic Impact—Recession? Depression?
- **Consulting with Professionals Can Save Time and Money Going-Forward.**

# Questions?

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# Ronald Scott Kaniuk, Esq.

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- Attorney with Nearly Twenty-Five (25) Years' Experience.
- Former Law Clerk to U.S. Bankruptcy Judge Marvin A. Holland.
- 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 Board Member and President.
- Married (18 Years) with Three (3) Children.

# Kaniuk Law Office, P.A.

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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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- **The Material contained herein was prepared by Ronald Scott Kaniuk, Esq. of Kaniuk Law Office, P.A.**
- **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.**
- **This Material was originally prepared for a Webinar sponsored by the Greater Miami Festivals & Events Association, Inc. (GMFEA), which retains a limited license to use and distribute the material contained herein.**

# Thank You For Attending!

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