

# Managing the Financial Fallout of Covid-19

July 28, 2020

YOU WILL BE MUTED DURING  
THIS WEBINAR



A

GREATER PITTSBURGH ARTS COUNCIL

**Arts loud and clear**

# Agenda

- Emergency Aid Programs
- How and why to consider personal bankruptcy
- Why arts organizations should consider a merger
- Sunsetting a nonprofit with dignity

# Unemployment Compensation

- **Traditional Unemployment Assistance (UC)** -  $\frac{1}{2}$  of weekly salary up to \$572/week (minimum \$195/week).
- **Pandemic Unemployment Assistance (PUA)** - expanded UC to gig workers, Independent contractors, self-employed, and persons without sufficient work history to qualify for regular UC.

*Note: some applicants with both regular income and GIG income have receiving lower UC benefits; a coalition of national VLA's are advocating to address this issue.*

- **Pandemic Emergency UC (FPUC)** - added 13 weeks of UC benefits when regular 26 exhausted = 39 total weeks of coverage.

*Note: the added \$600/week on top of regular UC is expired on 7/25/020 & Congress has not yet passed an extension.*

# Paycheck Protection Program (PPP)

- Small businesses and nonprofits with employees may be eligible for a PPP loan equal to 2.5 times its monthly payroll.
- The PPP Loan becomes a grant if the monies are used to pay the salaries of employees and things like rent, utilities, etc needed to keep the doors of business open.
- Congress added a second round of funding to the PPP program but the deadline for filing is now August 8, 2020.

# Economic Injury Disaster Loan (EIDL) Emergency Advances

- Up to \$10,000 grant funding available to small businesses.
- The grant does not need to be repaid but the amounts will be deducted from any EIDL Loan approved by the Small Business Administration.

# Housing

- If you can't cover your rent or mortgage, contact your landlord or lender immediately. Do not wait until you're behind on payments.
- Eviction and foreclosure proceedings are currently paused in Pennsylvania until August 31.
- You should pay if you can; rent or mortgage is still owed.
- Assistance with rent (up to \$750/month) or mortgages (up to \$1000/month) may be available through the PA Housing Finance Agency. Funding came from the CARES Act.

# Utilities

- The Pa Utilities Commission has suspended terminations of service under their jurisdiction as long as Pennsylvania is formally in a disaster. The utilities include:
  - Electric
  - Natural Gas
  - Water
  - Wastewater
  - Telecommunication
  - Steam
- Does not apply to municipal utilities but many are also suspending shut offs.
- If you are struggling to pay your utility bills, contact your service provider for possible emergency assistance programs.

# Loans and Other Debt

- **Consumer loans like car loans**
  - 90 day grace period.
  - No motor vehicle repossessions for 60 days.
  - No adverse credit reporting.
- **Credit Cards**
  - Contact your card company to request a delay in repayment or reduction in interest rates.
  - Consider paying only the minimum.
- **Student Loan**
  - Federal loan repayments suspended until September 30 with no interest accruing during the period.
  - Other student loan lenders may offer flexibility if asked.
- **Bank fees**
  - Banks are providing a 90 day grace period from fees and charges like overdraft, late, insufficient and monthly service fees.



# A Primer on Bankruptcy

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# Overview

- ▶ **Bankruptcy Options**
- ▶ **Debts**
- ▶ **Assets**
- ▶ **Income**
- ▶ **Chapter 13**
- ▶ **Conclusion**

# Bankruptcy Options

## ▶ Chapter 7

- *Discharges debts and protects assets*

## ▶ Chapter 13

- *Payment plan for individuals and sole proprietors*

## ▶ Chapter 11

- *Business reorganization*

# Debts

## ▶ A Chapter 7 Bankruptcy Eliminates Unsecured Creditor Claims

- *Credit cards*
- *Personal/signature loans*
- *Medical bills*
- *Deficiency claims*

# Debts (cont.)

## ▶ **Non-dischargeable Claims**

- *Taxes*
- *Domestic Support Obligations*
- *Student Loans*

## ▶ **Secured Debt**

- *Mortgages*
- *Car loans*
- *Tax liens*

# Assets

## ▶ Exemptions Allow for the Protection of Assets

- *Home*
- *Spillover*
- *Household Furnishings*
- *Vehicle*
- *Tools of the Trade*
- *Retirement Accounts*

## ▶ Prohibited Actions in Anticipation of Bankruptcy

- *Transfers to family*
- *Sales for inadequate consideration*

# Income

- ▶ **Means Testing to determine eligibility for Chapter 7**
  - State median income
  - Family size
- ▶ **Schedules of income and expenses**

# Chapter 13

- ▶ **Not Eligible for Chapter 7**
  - *Excess income*
  - *Non-exempt assets*
- ▶ **Mortgage Foreclosure**
- ▶ **Tax Problems**
- ▶ **Treatment of Unsecured Creditor Claims**



# Conclusion

**“One of the fundamental goals of bankruptcy relief is to afford a ‘fresh start’ to honest, but unfortunate, debtors.”**

**In re: Reschick (Judge Deller, 2006)**

# Managing the Fallout of the Coronavirus Pandemic:

*Corporate and Restructure Options for Nonprofits and  
Tax-Exempt Organizations*

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# Why Consider a Structural Change

- Survival -to allow charitable purpose to continue
- Cost-Cutting, for e.g., consolidating back office functions by using another party
- Expansion – to attract or work with a corporate partner with a like or complementary charitable purpose
- Protection – to build a “corporate veil”

# Evaluating the Potential Change

- Charitable purpose is key
- Protecting charitable assets is also key
- Boards of PA nonprofit corporations must use the degree of care, skill, caution, absence of conflict and diligence that a prudent person would use in a like situation (*the PA Business Judgment Rule*)
- Know the nature of your organization before you begin

# Corporate Transaction and Restructure Options

- Avoid undefined transactions
- Joint Venture
- Formal Affiliation (Not a true merger, but may be a step towards merger)
- Entity or Fundamental Change
  - Dissolution or Dissolution followed by Asset Acquisition
  - Merger
    - With one entity resulting
    - With multiple entities resulting (creation of a new entity may be needed)

# Joint Venture

- Two organizations have matching or complementary missions
- Each organization remains intact, but each works with the other to complete a project or activity
- Each organization brings something to the venture
- The venture or project may be short- or long-term
- The venture can be between nonprofits, or between a nonprofit and a for-profit, (note: a venture between a nonprofit and a for-profit raises additional tax and legal issues – beware ceding control)
- A joint venture agreement should be made in writing

# Dissolution

- Types of dissolution
- Allow for cost of legal steps, final accounting and settlement with creditors
- Obtain tax clearances from PA Depts of Labor and Revenue
- Formally alert creditors
- Discharge liabilities to the extent possible
- File notice packet with PA Attorney General's office for no objection letter (will include a plan for charitable assets)
- Submit petition for approval to PA Orphan's Court
- File Articles of Dissolution with PA
- Post-Merger tasks and wrap-up
- Can take 10 months – 1 year for the process.

# Dissolution Accompanied by Asset Acquisition

- One of two entities formally dissolves and wraps up its business
- Wrapping up business includes settling all debts
- Assets are sold or donated to the non-dissolving entity
- The surviving entity uses the assets of the dissolved entity to carry on the agreed upon charitable purpose of the dissolving entity
- The surviving entity does not take on the debt of the dissolving entity
- The process can take 10 months – 1 year



# Merger

- Merger of nonprofit corporations is governed by PA law and will require that one entity be the surviving entity and that the merging entity disappear
- If a third entity is to be the survivor to the merger, this entity must be created (may take 6 months)
- Should involve a period of due diligence
- Will involve review by the PA Attorney General's Office and a plan for charitable assets

# Merger (Continued)

- Petition for approval of merger must generally be submitted to Pa Orphan's Court
- May involve revision of some corporate documents, like bylaws and articles of incorporation
- File Articles (Statement of Merger) with PA
- Can take 6 months – 1 year for the process
- May involve revision of some corporate documents, like bylaws and articles of incorporation

# The Attorney General & Fundamental Change Transactions

- The Attorney General (“AG”) acts as *Parens Patriae*, safeguarding charitable assets and standing in for PA beneficiaries
- Donors/funders lose property interest upon donation (unless there is an agreement allowing change)
- Restricted use for which assets are donated cannot be changed without an order from PA Orphan’s Court
- A “No Objection” letter from the AG office is essential for protection of PA beneficiaries

# Review Protocol for AG Office

Materials to send for review, which takes 90 days:

- All organic documents (Articles, Bylaws, Organizational Charts)
- Transaction documents, such as a plan of merger
- Agreements secondary to the transaction, e.g., Key Employee Agreement
- Several years of financials and 990s, including info on restricted charitable assets
- Fairness and legal opinions and valuations, if necessary
- Post-transaction materials, such as board changes, new Bylaws, etc.
- Anything else the Attorney General's office would like to see or discuss.

# Formal Affiliation

- An example: The organizations come together to create some type of “affiliation”; not a true merger, but may be a step towards a future merger
- Usually, one board votes members of the other board onto itself, maintaining control, or “member” status is altered
- The actual merger may happen later, requiring full AG review and court approval
- Usually done when there are a lot of contracts or debts to resolve, or when a more complicated process is necessary

# Best Practices for Corporate Transactions & Restructures

- Keep charitable mission at the forefront
- Allow time and budget for the transaction
- Adequately capitalize entities within the final structure
- Observe corporate formalities (i.e., board meetings, minutes, bylaws)
- Avoid conflicts of interest in the transaction
- Keep separate accounts for corporate entities within the final structure and for any fiscal interaction between entities
- Avoid a complete overlap of board members, especially on subsidiary boards
- Buy adequate insurance

# Questions:

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# Artists Will Be Essential in a Recovery

- **Artists navigate the unknown.** We go in our studios and ask new questions, pushing away from shore and into uncertainty. In this time of roiling uncertainty, we know how to stay awake and responsive, and how to help others do the same.
- **Artists build possible futures.** This moment desperately needs futures beyond the sobering medical news and the jarring contortions of policies and markets.
- **We are connectors, conveners, community builders.**
- **We understand rhythm, flow, and negative space.** Not everything we do right now needs to be *doing*. Silence is a way of telling. Stillness is movement.
- **We bear witness.** We listen to and reveal what it is like to be alive right now.
- **We use what we have on hand to build what we need.** We make sculptures from discarded materials, dances out of everyday gestures, music from found sounds. At a time when many are lamenting what is being taken away, we know how to begin with what we have.
- **We create the images and songs and dances and stories that are needed,** that comfort and challenge and inspire, that return us to our deeper selves or urge us forward into transformation.
- **We build alternative economies based in collaboration, barter, D.I.Y. resourcefulness, and repurposing what others do not value.**
- **We challenge assumptions and reframe the world.** How we see this current emergency and how we see ourselves within it will determine how we emerge from it. Artists look past the noise to deeper, more radical possibilities.



# Covid-19 Resources

- **Greater Pittsburgh Arts Council:-** *Resources for the creative community including the Emergency Fund for Artists -* <http://www.pittsburghartscouncil.org/about/news/25-press-releases/5196-supporting-the-arts-during-covid19>
- **HR Advisors** - *A free GPAC member benefit to provide organizations with get HR guidance by email or by phone:* [HR Advisors@compass-resources.com](mailto:HRAdvisors@compass-resources.com) or 412-404-6934
- **PA Association of Nonprofit Organizations:** *Information for Pennsylvania nonprofits -* <https://pano.org/covid-19-resources/>

# Covid-19 Resources

- **Neighborhood Legal Services:** *General legal information for low income clients* - <https://www.nlsa.us/covid-19/>
- **Pennsylvania:** *General information on what Pennsylvania is doing to help for individuals and businesses* - <https://www.pa.gov/guides/responding-to-covid-19/>
- **PA Office of Unemployment Compensation:** *Information on eligibility and how to apply for unemployment compensation* - <https://www.uc.pa.gov/Pages/default.aspx>
- **PA Attorney General:** *General information on Covid resources* - <https://www.attorneygeneral.gov/covid-rights/>

# Covid-19 Resources

- **Housing Court:** *FAQ's on landlord/tenant issues* - <https://t.e2ma.net/click/811mzm/kr924g/4qy12yb>
- **US Department of Labor:** *Federal resources to help workers and employers* - <https://www.dol.gov/coronavirus>
- **US Consumer Financial Protection Bureau:** Summary of mortgage relief options - <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>

# Mental Health Resources

- **PA Support & Referral Helpline: 1-855-284-2494**
- **National Alliance on Mental Illness, Keystone Affiliate: [namikeystonepa.org](http://namikeystonepa.org) or 412-366-3788.**
- **Get Help Now Hotline (for substance use disorders): 1-800-662-4357**
- **National Suicide Prevention Lifeline: 1-800-273-TALK (8255)**
  - **Línea Nacional de Prevención del Suicidio: 1-888-628-9454**
- **Crisis Text Line: Text "PA" to 741-741**
- **Veteran Crisis Line: 1-800-273-TALK (8255)**
- **Disaster Distress Helpline: 1-800-985-5990**

# KEEP IN TOUCH

**PittsburghArtsCouncil.org**  
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