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Litigation Plan Tabs

In order for SBA to process your request for approval of a Litigation Plan, the following tabs must be submitted. Please complete all information and provide the supporting documentation as noted. If more space is needed, please add additional sheets. When properly prepared and approved, a Litigation Plan ensures that the litigation is cost-effective, necessary, and reasonable.

No expenses will be approved or paid during the litigation plan approval process. Please review SOP 50 57, Chapter 22 *(Expenses and Recoveries)* and Chapter 21 (*Litigation*), to learn more about the expense reimbursement process.

TAB 1	Contact Information
TAB 2	Attorney Information
TAB 3	Collateral Information
TAB 4	Proposed Actions
TAB 5	Proposed Budget
TAB 6	Legal Invoices
TAB 7	Receiverships

Submit Electronically: Send This File
(Select 'sbalitigation@sba.gov' as recipient)

U.S. Small Business Administration
Attn: Legal Department/Litigation Plans
1145 Herndon Parkway
Herndon, VA 20170

When is the Litigation Plan required?

1. ***Non-routine litigation*** The Lender must obtain SBA's prior approval of a litigation plan and budget before proceeding with any non-routine litigation such as:

· Legal fees are expected to exceed $10,000.00 **in the aggregate**.

· All litigation where factual or legal issues are in dispute and require resolution through adjudication;

· Any litigation involving a loan where a Lender has an actual or potential conflict of interest with SBA;

· Any litigation involving a 7(a) Loan where the Lender has made a separate non SBA loan to the same Borrower; or

· Any litigation involving the appointment of a receiver. **Lenders MUST submit a Litigation Plan for SBA approval prior to commencing receivership proceedings.** (For more information on Receiverships please see SOP 50 57 and follow the guidance in these Tabs.)

2. ***Routine litigation that transforms into Non-Routine Litigation, i.e. the legal fees exceed $10,000.00 in the aggregate.***

Amended Litigation Plans

Lenders must submit an Amended Litigation Plan to SBA for approval before taking any legal action or incurring any expense that materially deviates from its original Litigation Plan (13 F.F.R. § 120.540(e)). Material changes are those that, i.e., cause approved legal fees to increase by more than 15 percent.

For **Receiverships**, Lenders must submit an Amended Litigation Plan to SBA for approval before taking any action or incurring expenses that go beyond the amount approved in the original Litigation Plan.

Date:

Borrower and Loan Information

Borrower Name:

SBA Loan Number:

Companion Loans:

Have any Non-SBA Guaranteed Loans been made to Borrowers, Guarantors, or Principals? Yes ☐ No ☐

If Yes, complete the following:

Balance

Obligors

Status

Collateral

Is this a CLP Loan? Yes ☐ No ☐

Lender Contact Information

Lender:

Contact Name:

Phone Number:

Fax:

Email:

Address:

City:

State:

Zip Code:

Attorney Information

Law Firm:

Address:

City: State: Zip Code:

Phone: Fax:

- **Amount of Attorney's Malpractice Insurance:**

  Please provide Evidence of Malpractice Insurance that meets the minimum requirement of $1 million.

- **Attorney is licensed to practice law in the State(s) of:**

- **The Lender must provide a copy of the engagement letter. Is the engagement letter attached?** *(SOP 50-57 Chapter 21)* Yes ☐ No ☐

- **Are there any conflicts of interest, actual or potential, between SBA and the Lender or the Lender's Law Firm?** Yes ☐ No ☐

  If Yes, please attach an explanation of the actual or potential conflict of interest.

- **Does the attorney have expertise in debt collection and bankruptcy law?** Yes ☐ No ☐

  If No, please provide an explanation of why this attorney is being used, versus one with this requisite experience.

- **Please provide proof of specialization and/or experience in a particular area of law(if complex litigation is necessary). For example: a resume, law firm biography, etc.**

Loan Authorizations

Please provide a copy of all loan authorizations and amendments for the SBA-guaranteed loan for which you are submitting a litigation plan, as well as all SBA and non-SBA loans made to the borrower(s), guarantor(s), or principals of the loan for which you are submitting a litigation plan.

All such loans must have been listed on Tab 1, and must have documentation included behind this Tab.

Cost Benefit Analysis/Valuation

A cost benefit analysis is required to determine whether or not Litigation is appropriate based on anticipated recovery and the cost to pursue it. The Lender must illustrate that such analysis has been done and support its position that Litigation is appropriate.

What is the outstanding loan balance?

Please complete the Collateral Worksheet:

	Description of Collateral	Commercial or Residential	Lien Position Per Loan Authorization	Current Lien Position	Liquidated	Remaining	Abandoned
1					☐	☐	☐
2					☐	☐	☐
3					☐	☐	☐
4					☐	☐	☐
5					☐	☐	☐
6					☐	☐	☐
7					☐	☐	☐
8					☐	☐	☐
9					☐	☐	☐
10					☐	☐	☐
11					☐	☐	☐
Lien Position Per Loan Authorization							

Is personal property being pursued through enforced collection proceedings? Yes ☐ No ☐

If Yes, provide supporting documentation (i.e. valuations, appraisal)

Is Residential/Commercial Real Estate being pursued through enforced collection proceedings? Yes ☐ No ☐

If Yes, provide supporting documentation (i.e. appraisal)

*** If Commercial Real Estate is being foreclosed, provide an Environmental Investigation Report (i.e. Questionnaire, Phase I or Phase II Environmental Assessment)**

What is the estimated Recovery Amount? ☐

The proposed litigation must be cost effective. Please attach your supporting documentation showing that the value of the collateral to be foreclosed justifies the cost of litigation.

Obligors Worksheet

	Borrower/Guarantor	Remaining	Released	Bankrupt	Limited	Deceased
1		☐	☐	☐	☐	☐
2		☐	☐	☐	☐	☐
3		☐	☐	☐	☐	☐
4		☐	☐	☐	☐	☐
5		☐	☐	☐	☐	☐
6		☐	☐	☐	☐	☐
7		☐	☐	☐	☐	☐
8		☐	☐	☐	☐	☐
9		☐	☐	☐	☐	☐

What court action do you plan to take?

- ☐ Foreclosure Commercial/Residential Real Estate address:
- ☐ Replevin Personal Property
- ☐ Deficiency Action
- ☐ Court Appointed Receivership

  (SBA's approval will only be of the litigation budget to obtain Receiver)
- ☐ Non-Judicial Foreclosure
- ☐ Bankruptcy:
  - ☐ Chapter 7
  - ☐ Chapter 11
  - ☐ Chapter 12
  - ☐ Chapter 13

Other:

In what County and State will the action be filed?

Please indicate if there are multiple states involved and provide information for the related property.

- **What is your Litigation Strategy in this Matter?**

  Will a trial or evidentiary hearing be required? Are expert witnesses needed?

- **If your plan proposes to sue the individuals independent of a foreclosure and that action will substantially increase the litigation costs, please provide evidence that the individuals have sufficient assets to justify the costs.**

- **If your proposed action will result in the inability to pursue any deficiency balance, please provide copies of the documentation used to support that credit decision**

Is Alternative Dispute Resolution Feasible?

Are There Any Settlement Alternatives?

When will the Litigation be Complete?

Is There a Risk of Adverse Precedent? Yes ☐ No ☐

Describe any litigious issues you know about.

Estimated Legal Budget

1. Legal Fees _____ *(This should be a set amount and not a range)*

Method of billing (check one):

- ☐ Hourly Rate*
- ☐ Flat Fee
- ☐ Contingent Fee

* Please list hourly rate for each attorney and paralegal who may work on this litigation.

	Name	Hourly Rate
1		
2		
3		
4		
5		

2. Litigation Costs _____

Itemize costs anticipated to be in excess of $100. (For example, filing fees, expert witness fees, or title reports)

Total Estimated Fees & Litigation Costs _____

* If the Lender has other non-SBA loans to these entities, and should there be a pro-rata allocation of legal fees and recovery between the non-SBA loan(s) and the SBA guaranteed loan, please explain how legal fees, costs, and recoveries will be pro-rated.

Legal Invoices

Please provide a copy of all legal invoices incurred to date. Please note that these invoices will only be reviewed in connection with the Litigation Plan approval request and will NOT be reviewed for reimbursement purposes.

IMPORTANT: Reimbursement of ALL Legal Expenses, whether deducted from recoveries or presented as a reimbursement, must be reviewed by and approved by SBA in writing, even if the estimated attorney fees and costs were listed in an SBA approved Litigation Plan.

SBA requires copies of detailed invoices to support all reimbursements and expenses deducted from liquidation proceeds (this should include the attorney/ legal professional's name, hourly rate, time spent on each service, detailed description of each service performed or costs incurred and the date the service was performed). Lenders must submit actual invoices clearly identifying the Law Firm and Law Firm Address. SBA will not reimburse expenses using Lender's internal memos, spreadsheets, accounting records, or other internal documents.

Please review SOP 50 57, Chapter 21 *(Litigation)* and Chapter 22 (*Expenses and Recoveries*), to learn more about the expense reimbursement process. No expenses will be approved or paid during the litigation plan approval process.

Receiverships

Appointment of Receiver

The appointment of a receiver involves Non-routine Litigation. Therefore, Lenders must submit a proposed Litigation Plan for SBA approval prior to commencing receivership proceedings. SBA will not approve the appointment of a receiver to perform basic loan liquidation functions, and will not approve or reimburse Lenders for expenses related to unauthorized receiverships. A copy of the cost/benefit analysis and supporting documentation must be provided.

When Receiverships are Appropriate

A receiver is a Person appointed by the court to preserve and protect the collateral in connection with, or in lieu of, foreclosure. In general, receivers should only be used in exceptional circumstances when, for example, to maximize the recovery and minimize loss on a loan, it is necessary to operate the business (e.g., hotel or gas station) until it can be sold or the collateral can be liquidated. The laws governing receiverships vary by state. Generally, however, the court will authorize the receiver to take possession of the property, manage it, collect rents, and take any reasonably necessary action to protect and preserve its value. For further guidance please refer to SOP 50 57.

- **Will a receiver be appointed, for example, to operate the business or sell the collateral?** Yes ☐ No ☐

  If yes, describe the prior experience and qualifications of the proposed receiver and include an estimate of costs of the court and receivership proceedings.

Additionally if yes, provide evidence that the attorney hired to facilitate the receivership has specialized legal expertise and substantial experience, conducting the type of proceedings required based on the circumstances of the loan, (e.g., an attorney hired to have a receiver appointed to operate or sell a gas station must have expertise not only in debt collection and bankruptcy law, but also environmental and receivership law and must have prior experience handling gas station receivership cases)