

Tip # 3: Bankruptcy and Restructuring attorneys are generalists.

By Kim Fineman

Small businesses usually turn to Bankruptcy and Restructuring attorneys for their special knowledge of bankruptcy law. It might surprise you to learn, however, that your Bankruptcy and Restructuring attorney is also a “generalist.” To advise businesses on restructuring, the attorney must first have a broad understanding of general business law. Typical business restructuring cases often include issues of corporate, partnership, real property, commercial, intellectual property, employment, litigation, mergers and acquisition, tax, and finance law. Small business restructurings can also include issues of licensing, probate or even family law. A Bankruptcy and Restructuring attorney must be able to spot potential issues in these and other areas to effectively advise their clients.

A Bankruptcy and Restructuring attorney differs from a business law attorney in that the Bankruptcy and Restructuring attorney has further training and experience in both federal bankruptcy law and state restructuring law. As we discussed in [Tip # 1](#) in this series, the first objective of a Bankruptcy and Restructuring attorney is to help your small business avoid a bankruptcy filing. However, the ultimate possibility of a bankruptcy filing is always guiding the strategy and negotiations of a Bankruptcy and Restructuring attorney. It is your trump card, if needed.

Bankruptcy is a unique type of law, not practiced by many attorneys. The law that governs bankruptcy cases is federal law and the Bankruptcy Courts are federal courts. However, Bankruptcy Courts often apply and look to state business laws. In addition, the particular contract that may be critical to your business bankruptcy case may be governed by the law of a state different from the state where either your business or bankruptcy case are located. This requires Bankruptcy and Restructuring attorneys to have a comfort level navigating federal law, state law and the interaction between them.

Not all bankruptcy attorneys have this broad knowledge of business law. Most attorneys who focus on business bankruptcies and restructurings do not represent individuals. Likewise, an attorney who regularly represents individuals in personal bankruptcy cases does not generally take business bankruptcy cases. Sometimes there is overlap but not usually. While attorneys focused on personal bankruptcy cases may not have the same knowledge of general business law, they are more likely to have a broader knowledge of family and probate law issues—as those issues will come up more frequently in personal bankruptcy cases. If you see the word “restructuring” in the description of the cases handled by the attorney, chances are that attorney focuses on business—and not personal—bankruptcies.

So, what does the general business law knowledge of Bankruptcy and Restructuring attorneys mean for their clients? These attorneys can help you spot and manage a variety of business challenges as part of your small business’ overall restructuring strategy. You should feel comfortable raising any and all business challenges with your Bankruptcy and Restructuring attorney. In fact, it is essential. If your attorney isn’t aware of a particular problem, it may be inadvertently left out of our restructuring strategy. If a bankruptcy filing is ultimately necessary, detailed schedules of assets and liabilities are required and your attorney will guide you through those public disclosures. Either way, a successful restructuring requires a full and open dialogue between you and the attorney from day one. It may seem uncomfortable at first to be so open about your business challenges with an outsider but know that is exactly what your attorney wants and needs you to do to allow them to help your small business.