



PANTHER  
G R O U P

# UP IN SMOKE?

a comprehensive guide to  
managing distressed assets  
in the cannabis industry

**Vicente.**

**LEE &  
ASSOCIATES**  
COMMERCIAL REAL ESTATE SERVICES

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# CHAPTER 1: DISTRESSED ASSETS

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To say the cannabis industry comes with its fair share of challenges would be an understatement. From the heavy tax burden to the thriving unregulated market and the formidable competition posed by the loosely regulated hemp sector, many cannabis businesses find themselves on the brink of collapse, weighed down by crippling debt.

In the United States, when a conventional company faces financial hardships, it has an array of options at its disposal – securing a bank loan, seeking bankruptcy protection, or liquidating assets to generate capital. But for cannabis enterprises, the choices are far more limited: either sell off assets or opt for the complex route of receivership.

If you're standing at the crossroads of your cannabis venture, drowning in financial obligations with no clear path to financial solvency, fear not. The Panther Group, Lee & Associates, and Vicente LLP have joined forces to craft the Distressed Assets Guidebook, your compass in navigating these turbulent waters and making informed decisions for your enterprise.

There's no shame in admitting when it's time to move on. You've undertaken the Herculean task of building a business, employing countless individuals, and contributing to a transformative industry that still grapples with federal illegality. The odds were stacked against you, yet you gave it your all. Rest assured, countless entrepreneurs across the nation are currently sharing your plight.

Our hope is that the guidance presented herein will empower you to make shrewd decisions, facilitating a seamless transition from your current endeavor to your next venture, while extracting the maximum value from your current undertaking.

However, it's important to recognize that your assets might still hold significant value, and an opportunity for a merger or acquisition could be on the horizon.

Mergers & Acquisitions are most beneficial when a company can meet its financial commitments and uphold its payroll obligations. Waiting too long, until the brink of insolvency, can lead to unfavorable terms for any potential transaction. A company that maintains financial stability, even during challenging times, holds a far stronger negotiating position.



## IDENTIFYING DISTRESS SIGNALS

But how do you discern the right time to offload your assets to salvage your enterprise? Several key indicators can signal the need to seek distressed asset buyers:

**Unsustainable fundamentals:** The company can no longer meet payroll or service its debt, with accounts payable significantly in arrears. Without an injection of capital, the debt is destined for default.

**Troublesome assets:** The company can no longer meet payroll or service its debt, with accounts payable significantly in arrears. Without an injection of capital, the debt is destined for default.

**Troublesome assets:** The company's assets, once thought valuable, have become a drag on profitability, possibly due to failed acquisitions or inventory mismanagement.

**Capital woes:** The business remains unable to secure the necessary capital to activate licenses and commence operations, and now wishes to divest itself, potentially below market value.

**Market pressures:** Shifting market trends, such as declining wholesale prices, foreshadow the company's imminent demise.



# CHAPTER 2: WHAT TO DO IF YOU HAVE A DISTRESSED ASSET

Now that you've acknowledged the distress within your asset, it's time to explore your options for recuperation before it's too late.

If you are behind on state or federal taxes the government can impose liens. Some states have implemented regulations where failure to pay state taxes imposed personal liability upon the executives/decision-makers.

Remember, because cannabis is not federally legal bankruptcy is not an option. Therefore you have to do whatever is necessary to pay back whoever is wanting to be repaid at whatever cost - this includes selling off your assets. (CA has been using this as leverage for failure to pay state taxes)

## OPTIONS FOR DISTRESSED ASSETS

**1. Walk away from it, close up shop.** If a company is structured as a sole proprietor or a partnership, the business owner is 100% responsible for repaying the debt, in full. Bankruptcy is not an option for cannabis business owners so the debt will have to be paid with no relief from the state or federal government. Consult an attorney or accountant before making this decision to ensure the best outcome.



### BANKRUPTCY IS NOT AN OPTION

#### FOR CANNABIS BUSINESS OWNERS

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### INTELLECTUAL CAPITAL

(acqui hires - acquire assets of the business and in exchange you become an employee of the acquiring company) more valuable than the asset alone.

**2. Find a strategic partner** that sees value in one or more of your assets. These can include: inventory, real estate, or intellectual property. They can help pay your debts in exchange for ownership or equity in the company. Companies are currently using the JV model to acquire assets or capital rather than a full acquisition. In this situation everyone keeps their original form of their companies from prior to the venture.



**3. Sell to a competitor** who is doing a roll up of companies similar to theirs.

**4. Put the company in receivership** Very unlikely equity holders will get any value in a receivership (as any proceeds will likely not even fully satisfy the debts of the company). state law concept similar to bankruptcy - can quickly transfer the license to a receiver in some states)

**5. Sell the company** or assets off one by one.

***\*Missed payments with lenders or investors can trigger a recall on the loan or give investors the green light to enforce what may be in an agreement.\****

The path you choose depends on the source of pressure you're confronting, whether it's from the government, private lenders, vendors, or investors, each demanding their dues. For cannabis businesses, missing payments can lead to severe consequences, including the imposition of tax liens and personal liability for executives.



## YOU CAN OFTEN NEGOTIATE WITH LENDERS.

Their incentive to negotiate will depend on how much capital they would recoup in an Article 9 / receivership / ABC situation. They should be motivated if in those situations they would only get pennies on the dollar.



# CHAPTER 3: SELLING YOUR DISTRESSED ASSET

If you have made the decision to sell your company, or assets, you'll need to prepare for buyers. In this situation you are going to have very limited leverage so it pays to be overly prepared here. The more clarity and proof you have on what you have and its value, the easier and quicker a negotiation will go.

## WHAT TYPES OF DISTRESSED ASSETS CAN BE SOLD

When looking for a distressed asset buyers are going to be looking for some type of value that is easier or cheaper than building or acquiring themselves. There is value in many parts of your business that may be appealing to a buyer.

Some things that buyers will find valuable in a cannabis business

- **A Prime Retail Location**
- **Cannabis License(s)**
- **Equipment**
- **Uncollected Account Receivable and other access to monies (ERC credits, judgments, etc.)**
- **Inventory - Note: for plant touching inventory it can only be used if the state required owner of the company is making the sale/transfer OR are non- cannabis materials.**
- **Unique or Valuable Intellectual Property (IP)**
  - Patents or Trademarks
  - Brand Identity/Audience

## PREPARING YOUR COMPANY FOR A DISTRESSED ASSET SALES

If you are holding a distressed asset you'll want to make a decision about how you'll liquidate as soon as possible. The more time passes and bills don't get paid, the more difficult your position and weaker your leverage in a negotiation.



**THE PAST IS THE PAST.  
IF YOU WALK AWAY WITH \$1  
YOU'VE DONE WELL.**

A distressed assets sale is similar to any other M&A deal, accept the fact you'll get a price you won't like.



## We recommend doing the following to prepare yourself for sale:

**Make a list of all your assets and give them a dollar value.** What is a fair asking price and what is the lowest offer you'll accept for it.

**Consult an expert real estate professional** to get opinions of value and market insights on each piece of owned real estate, whether they be retail, industrial, or agricultural assets.

### **Make a list of your lenders and vendors that you have an outstanding balance with.**

Negotiating with your lenders is a good way to lower balances. This is a good opportunity for them to recoup some of their investment or outstanding A/R before there is nothing left.

### **Prepare what is still owed and what to offer them**

in lieu of payment in full. Do this **before** calling to negotiate. This could also be an opportunity to negotiate with lenders to push maturity dates or payment plans. They can tack on fees or interest to the note to make it worthwhile.

**Consider equitization as an option.** It's possible to take owner shares in a company and dilute debt into equity so the debt holder becomes a shareholder. Discuss with your attorney before entering negotiations with debtors.



## DO THE MATH

on what lenders would recover if the company folded. That's their incentive to negotiate (presumably they would get pennies on dollar).



## THERE CAN BE PERSONAL LIABILITY TO OFFICERS & DIRECTORS

for missing payroll. This is a hard line you should never cross.

### **Keep paying your bills, especially your payroll.**

If you are unable to make payroll you could incur fines and penalties from government agencies that will add to your financial burden. It also makes you more vulnerable in a distressed sale to receive even less for your company or assets.

## **Gather and prepare your documents for a potential buyer. This includes:**

- All outstanding debts
- Profits & Loss
- Corporate documents
- Pitch deck (optional but not mandatory)





- **Taxes from the last three years**
- **Leases or other contractual obligations**

Use these documents to help you tell a compelling story for potential buyers. What are the strengths of the company? It may be struggling financially but it's a great investment and worth bailing out of debt because of a great reason!



## PREPARE FOR STICKER SHOCK.

Nearly all investors view cannabis assets as distressed assets, so the bargain-hunting exercise is far more pronounced in this industry than others.

**Hire a smart team of people to help you** with your valuation and in negotiations with a buyer. You can sell the asset to anyone for whatever you want because it's outside of bankruptcy court, however, it also means you are more likely to undersell what you have unless you know how to negotiate with sharp buyers.



## TO GET THE BEST DEAL

you'll want as many people as possible bidding on your assets. Having different representatives gives you more reach to find those buyers.

## CONSIDER HIRING:

- **An Advisor in M&A/Distressed Assets** to help you make the best decisions about your next move
- **A CPA** to help you assess your assets
- **An M&A attorney** who specializes in the cannabis industry to protect you and your assets in the sale
- **A Business broker/banker** to package the business and shop it around
- **A Commercial real estate professional** who is knowledgeable about cannabis real estate assets, as well as the overall commercial real estate market.
- **3rd party CRO (Chief Restructuring officer)** is highly recommended. If you are going to sell you will still want to consider some sort of restructuring. You don't want to be in a situation where you have run out of time/money and miss payroll. Missing payroll can seriously damage your ability to negotiate in a sale. Move while you have the financial ability to hire a CRO because they won't work on spec.



If you are facing a difficult situation, **IT'S CRITICAL TO TALK TO A LAWYER,** like Vicente, LLP, sooner than later to avoid personal liability and explore your options. These things take time and money and if you wait too long you run out of both and end up in an even worse situation.



**Missing payroll can seriously damage your ability to negotiate in a sale. Move while you have the financial ability to hire a CRO because they won't work on spec.**



One reason why it's important to hire Panther is that we can come up with

## **CREATIVE SOLUTIONS**

to get you out of hairy situations. Current client, lender is calling in the loan and they have no choice to sell or close. We have negotiated a land sale and are going to get equity in a new company that is buying his company.

The goal is to attract as many potential buyers as possible to achieve the best deal. Remember that time is of the essence; act swiftly to protect your interests and avoid personal liability.



# CHAPTER 4: THE DISTRESSED ASSET BUYER

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When searching for a buyer for your distressed assets it's a different process than looking for equity or debt. It really doesn't matter who buys your asset as long as they have the cash to get the debts paid.

## DISTRESSED ASSETS BUYERS

Distressed asset buyers typically fall into a few different categories, all looking for a great deal. These buyers are generally more transactional, looking to maximize their investment. Buying assets from a distressed company is less risky, while buying a company in a distressed position is a huge risk..

## WHO BUYS DISTRESSED ASSETS

**Investment Businesses or groups** that have the financial capability to purchase your business or assets. Who are the big players that have cash in hand?

**MSOs or single state operators** with multiple locations. A buyer who is looking to acquire more licenses in a given area or have hit the market cap on licenses.

**Competitor who is expanding.** If they are doing well and looking to expand they will want to purchase a similar business that will be cheaper to salvage than rebuild.

Finding a buyer is a combination of strategy, execution, and timing. If your company is revenue generating it is a much more attractive opportunity for a buyer. Investors are looking to deploy capital into assets with higher levels of certainty, which is the case in a revenue generating business.



### REMEMBER, BUYERS ARE LOOKING FOR DEALS.

They are taking on considerable risk stepping into the shoes of the seller. No one wants to buy a company that is more in debt than the company is worth. Can you offer them something that is better.



# CHAPTER 5: THE SALE OF DISTRESSED ASSETS

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While most distressed assets sales will be a straight cash deal, there may be times a buyer may offer options other than cash. It depends on your situation and what you expect to get out of it but some of the options could be:

- 1. A cash and stock option** that gives you stock in the company that is buying your asset.
- 2. A full stock purchase with zero cash.** Definitely a risky option unless you are given stock in a stable company trending positively.
- 3. A stock or part cash purchase along with being hired** to either continue running the company or working for the purchasing company, called an “acquihire.”

When it comes to negotiating the purchase and sale agreement, it is critical to use a trusted attorney or experienced advisor to guide you through and protect you in the sale process.

Distressed sales are unfortunately full of predatory buyers looking to take advantage of you. You are in a vulnerable position, and counterparties look to expose your weaknesses and manipulate the situation in their favor. As the leader of the business, a lot of emotion is typically involved, and that can cloud your judgment. Having an independent trusted advisor on your side ensures you have your best interests being protected.

## THINGS TO KNOW BEFORE A SALE

**1. Start your negotiations early** in the process so you can get creative with your lenders. There are ways to make everyone better off but it requires swift and early action, before you lose your leverage. There are always options but you have to act sooner than later, especially with any landlords from whom you are renting. A lease termination can be a lengthy process and most landlords will appreciate you for coming to them early on. Once cash runs out, you have to think about personal liability which means a shut down.



**2. Keep up your obligations to lenders.** That makes it easier to negotiate a settlement - then they won't have to expend legal fees to chase after you. Being in default of a loan, or worse having a judgment against your company, is going to create major concerns for any buyer.

**3. Above all, remember to always remain calm and rational.** A highly emotional negotiation will only hurt you and help the buyer.

**4. Start the process for selling your assets asap!** Start as soon as you realize that you won't be able to keep the company going financially any longer. The sooner you make the right moves the better position you'll be in for a negotiation.

**5. Get fair value for your real estate.** A "dirty little secret" of the M&A world is that investment bankers and business brokers don't always do the best job of underwriting the real estate involved in their transactions. Retaining quality commercial real estate experts to complement your sales team (which can often be done on a commission basis with no up-front costs to you) will help ensure that you're getting the most out of that component of your exit.

## COMMON TERMS FOR DISTRESSED ASSETS

**Receivership:** can't go through bankruptcy, which is federal, so can use state level law as an option.

**Assignment for benefit of creditors (ABC):** State law way of shutting a company down.

**Corporate Restructurings:** Contractual alternative to receivership or bankruptcy. Lenders take over equity in exchange for eliminating the debt.

**Article 9 Remedies:** Uniform commercial code - remedies for straight credit - creditors have a right to take assets and sell them. Can't do with cannabis b/c regulators control. Subject to regulatory oversight.

**State wind down:** Shutting company according to state law



# CHAPTER 6: GET HELP OR GO IT ALONE

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The decision to sell your business or assets at a loss can be agonizing. You've poured your heart and soul into building your enterprise, and the prospect of settling for less can be daunting.

Opting to go it alone entails the near impossible task of locating a buyer, a daunting challenge that may feel like searching for a needle in a haystack. Moreover, you'll be navigating negotiations solo, exposing yourself to seasoned negotiators who specialize in securing the best deal for themselves.

As we stated earlier in this guidebook, you will be facing sharks who are experts at getting the lowest price and the best deal for their money. You will be playing out of your league and risk walking away with debt you're now responsible for. However, the biggest risk is that you won't be able to locate a buyer and you'll have to take on all the debt personally.

You need not tread this path unaided. Engaging an attorney and an advisor well-versed in distressed asset transactions is crucial. They will safeguard your interests, ensuring you extract the maximum value from your assets while shielding you from predatory buyers who seek to exploit your vulnerability.

If you're contemplating the sale of distressed assets, know that Vicente, LLP, and The Panther Group are here to assist. Vicente, LLP boasts extensive experience in this arena, while The Panther Group serves as a strategic advisor with a wealth of expertise in selling distressed assets. Don't hesitate to contact them for guidance and support on this challenging journey.

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