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OPTIONS FOR MANAGING

OPTIONS FOR MANAGING DEBT

If you are researching this or watching this little video, chances are, you're going through financial hardship or you know somebody who's in a bit of a financial bind. The important thing to remember in these situations is that there are always options. It's just that you don't know what you don't know and its unchartered waters - and that can be scary. So what I'm going to do is talk you through some options, from a legal and commercial point of view.

I want you to imagine that your favourite nephew has come to you and said he has a business proposal for you. He's got this great whiz bang business and he asks you to invest $100,000 dollars, so you invest your cash into his business. You draw up all the paperwork and he starts giving you a return on your investment. The business is profitable and everything's great and you are this silent partner with your money out there working for you. And then, your nephew comes to you and says, "Actually, there's some financial problems, the business is broke, we owe creditors half a million dollars and I don't know what to do."

His problem has now become your problem. You lent him your money, you've gone into business with him and now, there's a potential backlash and downside of many hundreds of thousands of dollars more which could well hurt you financially.

The point with this little story, is that it's a metaphor for what your credit provider or your lender is going through – where you, as debtor, are the nephew and they, as creditor, are the aunt or uncle. Remember, it's a joint problem. You owe them money and you don't have it and it becomes their problem. So let's make it their problem as well and let's talk about some options.

The courts are full of cases of business deals, of commercial transactions, of contracts that have gone wrong, and that's all this is with your current situation. It is two people who went into business together. The lender advanced you money expecting a profit and you borrowed money expecting to be able to repay it - and for whatever reason, the market's changed, the world's changed, your situation has changed and the bottom line is that you now can't pay it back. So it is now the lender's problem as well. And once you understand the landscape of this and the territory that we're navigating through, it's all pretty simple. There are lots of options.

So we're going to go into damage control mode. It is an issue, it is a challenge that has come up - but life is full of challenges. Winds will always change and the wind's too powerful. We can't fight mother nature. What we have to do is adjust our sails to meet the change head on and that's what we're going to do.

So let's start our crash course in damage control. The first thing you have to remind yourself of is that - as in our example of the nephew going into business with you - you have to protect your own situation first. You have to secure your own ground. If you're going to build a tower, you're not going to build it on quicksand or over a quagmire. You're going to want to make sure that the foundation, that the base, is safe.

First rule of damage control and this is non-negotiable, is protect what you have. So, let's have a look at how you can do that. What you're going to want to do is quarantine or secure everything so no one can get at it. So, back to our metaphor, your nephew said to you, "Oh there's probably half a million dollars owed to creditors of our company." You don't want those creditors in our little story here to come and say, "Okay, well the nephew's got no money, the company's broke but the aunt or uncle has property or has a house full of an art collection or a home collection or an income we can go and attack". You just don't want them coming after your personal stuff. So the first thing you're going to do is build a fortress around what you already have, so they can't ricochet and come and attack you as the last man standing, and that's what's going to happen for you now with your debt. Or, you may already have set up my Master Wealth Control System.

Some years ago, around the time of the global financial crisis, I went broke, not just broke. I probably did it spectacularly better than you ever could. It was a thing of brilliance. So I'm talking multi millions of dollars in debt and what we did was we navigated our way through that and that's what I'm talking you through in this session. So the first step, the first port of call was to say "Okay, damage control, let's quarantine the good from the bad." We still had some good assets, we still had some net worth. It was just 'a temporary cash flow problem', I kept saying that to myself. Every night before I went to bed, I said, "I'm not broke, this is a temporary cash flow problem" and first thing I had to do was take control and I didn't want other people coming after me, taking my assets, garnisheeing my pay, taking my rental income from investment properties, coming and seizing my personal goods and property.

As a lawyer, I knew all the avenues of law that my creditors could utilise to come and take things from me. You pretty much lose your rights. The sheriff could come to the door with a writ of execution, gain access to my home, take an inventory of cars and computers and televisions and anything of value and seize them and sell them. So I devised a way to shore up my position. It was a bit like a patient with a gangrenous limb, you'd want to amputate that, you want to get rid of that to save the rest of the body. So I had a lot of bad debt and I wanted to quarantine that. I wanted that disease to stay alone so that it didn't infect all of my good assets and my net worth. I wanted this situation of me spiraling in a tail spin where I was totally out of control to stop once and for all and the first step with that was to excise the bad from the good and make sure I put the good in a vault so that no one was able to get through to it and take it. And that's something that we do for clients. So for those who already have that set up by us, step one, take a deep breath because you're safe and your good stuff is now quarantined – well done! If you don't have that, our office number is (02) 9986 2228 and our email address is support@masterwealthcontrol.com.au. Contact us about getting that in place. That is the first and most important step towards gaining control. Lock away all your good stuff beyond the reach of your creditors. Make sure your assets, wealth, belongings and all your valuables - the stuff that you want to retain and control - is safely secured.

Okay, once we have that part covered, what are our next options to consider in the process? We've got bad debt. We've got some sort of financial problem and we're thinking, "Do I just throw in the towel?" A lot of our clients at the moment - and it's a massive trend, so if it's you, you're not alone - have invested heavily in mining towns and mining properties and those properties were valued close to or in excess of seven figures at the height of the mining boom some years ago. So people bought houses for a million dollars that are now worth only $250,000. At the height of the mining boom, they were getting many thousands, $2,000, $3,000, $4,000 dollars a week rent for these properties and now, market rent is $200 dollars a week and the property's worth $250,000 dollars if it is saleable at all with no tenants, no buyers and the glut of properties now on the market in these areas. There are hundreds of properties in that mining town on the market all at once now and no tenants. So it's an issue not only for you as the investor but for your lender as well. And banks have come in with their quarterly updates financially and they're saying, "This is a big problem. We have a lot of defaulting loans in mining towns where the underlying security property is upside down" (that is, the mortgage owing is more than the value of the property in the current market) - so it's a trend that they have to deal with. It is their problem as well.

But your first decision is, "What do I do?" The first question you need to ask yourself is, "Is there a light at the end of the tunnel? Is there a way out of this or not?" When you're thinking about that, think "Is there something, is there some middle ground, can I negotiate with the bank? Can I improve my position?"

Your problem may not even relate to a mining town property. For example, I had some properties that went bad in the global financial crisis in so far as the debt on the property exceeded the market value when the property market slumped. Say I owed $1.2 million on a property and couldn't meet my repayments on that debt, so I went to agents and they told me that the most I could get for the property was between $900,000 and $1M. Then I had to take off commission and other marketing and selling costs off that figure so I really came up short, not to mention the heaps of other properties on the market and it was just a bad time all round.

But I knew fundamentally that if I hung on, the market would come back. Now these were good properties in Sydney and from my point of view, I thought "Okay, can I go to the bank and work through this with them?" That's what Donald Trump did in the late 80s, early 90s when he went broke. By rights, he should have gone bankrupt as he was insolvent - He couldn't meet his debts as and when they fell due - but he went to his lenders and said, "Well it's your problem too. I'm going down and I'll take you with me so help me trade through it". I read his book, 'The Art of the Comeback', and I thought, "Well, I'll do that as well." I went to the bank and I said, "I'm going down. Can we adjust my interest rates? Can we capitalize my interest?" And I negotiated a workout package with them. I'm going to talk to you about that sort of thing in a minute but, what I ended up doing with my situation, it was a 'trade through' scenario where I could keep treading water and that was what I was able to do - get tenants in the properties as executive rentals. So I had all my furniture and I had to move out of the family home but I was able to get an executive tenant for that and I got the excess furniture from my home put in the apartments and I was lucky enough to move in with my parents in law. So my apartments were then able to at least pay for themselves with the higher furnished executive rental income.

Now this was one solution that worked for me at the time but it may not work for every property or every situation. I've got a lot of clients in mining towns who say the market there will never, ever come back. It's not like those property owners can tread water for the next three years, knowing that the mining boom will start again and these houses will go up in value again and achieve high rental incomes with a lineup of tenants fighting to get into them. You will need to do your research and find out what's on the cards for the local market in relation to your property and whether it worth hanging on. But if you've got $800,000 dollars of shortfall, for example - if the property's worth $200,000 and you owe a million dollars to the bank on it and it's only earning $200 dollars a week and that market's never going to come back, if it's just a little country town that probably will never see a mining boom again, then you're never going to see prices come back up to a million dollars - and there's no point in hanging on. You've got to go through damage control. So, can you negotiate? You can always, always negotiate. If someone has a gun to your head, there are always 50 things that you can do. You've just got to breathe and think it through.

What is your fallback position? Have a think. In a perfect world, what would you like to see? For the mining town people, it is that to see the hemorrhaging of money every month on the mortgage stopping? So the property's sold, yes there's an $800,000 dollar shortfall and that there's some way of dealing with that. In an ideal world, you'd love to see the bank just waiving that and the debt is forgiven.

Then, when you're looking in a rational way at things, you have to ask yourself, "What are the ramifications of all the options I'm considering?" Put everything through the sieve ten times over. Don't just go into denial and bury your head in the sand. That's the worst thing you can do. So I'm going to now give you some information and some knowledge. Information is so powerful. Forewarned is forearmed. If you know your enemy better, if you know their strategies, if you know the lay of the land and the landscape of where you're going to do battle, you're going to succeed. So that's what I'm going to arm you with.

Your first reaction to any change is going to be emotional. That's just how we're wired as human beings. We are creatures of emotion. So with change usually comes fear. It's that adrenaline, it's fight or flight and many of us just tend to put our head in the sand and run away and pretend that it's not happening and that it's beyond us - We kind of give up. We just want to maintain the status quo. We don't like change because our caveman brain says "Change is dangerous."

Let's talk about the elephant in the room and let's address it because once you move through the fear and through the emotion, the next phase is to think rationally and logically. And as a lawyer, I've been trained to do that because you're taking other people's problems and you're dissecting them and you're very, very objective. But you can do that with your own problems. I did it with mine. If you can get beyond the emotion to a rational place and just look at it as facts and figures. That's all it is - you're just a file in some bank - then you can work and trade through it.

If your debt is other sort of debt like credit card debt or other unsecured debt, there are still options as well.
So, let's talk about the types of debt so you have a better overall understanding of debt. Let's assume that we've decided, "Okay, we can't pay this. We can't maintain the status quo. We can't just keep throwing good money after bad. Let's put up a white flag and say to the bank, 'We can't pay this, we're about to default." Default means "I just can't make the next payment on my mortgage or my credit card" or whatever sort of debt it is. So, let's talk about secured versus unsecured debt.

There are two basic types of debt. Secured debt means that there is some underlying asset that the lender has their foot on. They can take the asset that has some value in it to pay themselves back. So, the prime example is a mortgage. With a mortgage, not only do the bank lend you money, hundreds of thousands of dollars to buy a property, but they also take 'security' over that property by way of a deed of mortgage. This is a piece of paper that they register on the title of the property. And what that means is that if you don't repay the money or keep your part of the contract - keep making the mortgage payments - then they have the right to take the property or the house. That is what they call secured debt and it can happen with cars as well, it can happen with furniture. If you buy a lounge at Harvey Norman on finance, they have security over the goods and the television or whatever it is. They can come and take that back if you don't pay and that's got some value to it – they can sell it to recoup some of the money that they have lost because you breached the agreement they had with you by not paying. They can also - in the metaphor we had, with you as the uncle or aunt lending money to the nephew - they can take a charge over a company and the assets of a company. So what that means is that, if you default on the loan or you don't pay the money due that month, they can take action to come and take the asset and that's going to be their first port of call to get some money back - to sell something of value that the debt is secured by, usually a house, a car, a business - that sort of thing.

Unsecured debt is debt that doesn't have any underlying asset or anything tangible of value that they can take if you don't pay. So when you go to a pawnshop, you pawn your jewelry to get money. If you don't come back and pay them back the money within the agreed period, they will sell your jewellery. Think of a secured loan like a pawnshop. You've given them the house or the car and you've given them the right to sell that when you signed up in return for lending you the money. As long as you pay the money, they don't take the asset. An unsecured debt is just a promise to pay.

The prime example of an unsecured debt would be a personal loan or a credit card. So you've said to them, "Please lend me the money and I promise you, I'll pay it back" and you've signed documents with that pledge or promise. They can't take any asset at first instance. If you default on repayment, they're just going to harass you, they're going to ring you, they're going to have debt collectors after you but there's nothing tangible for them to take. So, secured debt is more powerful for a creditor. Unsecured debt means they're going to panic a lot more and they're going to go a lot harder to try and get the money back because they realize that they're up the creek without a paddle. They've got nothing but your promise and that's why, with secured debt, you pay a lot less. It's less risk to the lender. So the interest rates on a residential mortgage, for example, is in the 4% area, whereas for an unsecured debt, a credit card, you're paying more like 15 to 20% and that's the difference - the risk to them. So if the debt is secured, they're going to be a lot less panicked because they've got an asset there. But they're still going to come after it and other assets. That's why asset protection is really important. Even if you're circling the drain, it's important to set that up now in advance.

Okay, so mortgage debt is secured debt. Secured debt can become unsecured once the asset is gone so I'm calling that 'shortfall debt' for our purposes but it's really secured debt that's become unsecured.

So in the mining town example, we have a property where we owe the bank. The mortgage is a million dollars but it's just been sold for $200,000. The bank have moved in, they've sold up the asset, they've paid themselves back the $200,000 that you owe them but you still owe them $800,000 dollars and that portion of the loan remaining outstanding then becomes unsecured. That's what they call 'shortfall debt', so you now owe them $800,000. First thing the bank is going to do is get a judgment for possession of property to seize the property and then, at the same time they're also going to get a judgment for the shortfall amount.

Once creditors have a judgment, whether it be for credit card debt or shortfall or mortgage debt or whatever it is, they're going to want to enforce that and if you have other property, the next thing they're going to want to do is take that judgment and register it on the title of other property like your family home or any other real estate that you've got because real estate is the most valuable asset most people hold. It's where most people store most of their wealth and where lenders can get a bit of traction in shaking you down for some money. You'll either pay them out not to lose the home or they become like a second mortgagee once they've registered their judgment or order on your title and they can sell up that asset to take any equity. That's why it's really, really important to quarantine your other wealth so that this disease of bad debt doesn't spread there. Set up and protect yourself to stop that knock on effect. You've got a much more powerful position and a bargaining tool if creditors cannot attack your other wealth.

Now one question that I commonly get asked is "Okay, if I stop paying this loan, what happens to my credit report?" We all have, in this day and age with Big Brother watching us, a 'credit report'. A good way to check your credit report is go to www.mycreditscore.com.au and that will show you your Veda report. Veda is just a company that keeps records of these sorts of things. Another one is Baycorp. So go to that site and look up your Veda Credit Report. You will then see what any bank or any lender or any credit provider sees when you apply for credit. If you apply for credit for a mobile phone or something, they'll run a search through Veda or Baycorp and what it shows is every loan or any credit you've ever sought approval for. So if you applied for a loan in 1995 for $200,000 dollars from the Commonwealth Bank, it will show that. It will show where you've defaulted on loans, so it will show that you didn't pay your credit card bill through American Express and American Express has the right to go and blacklist you on your credit report. All creditors can report you and affect your credit report if you default in loan repayments to them
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As a rule of thumb, unsecured creditors blacklist you via your credit report. They've got no other way of hurting you or holding something over you so they'll just go and blacklist you if you miss a loan payment. And it could be over really minor things like a mobile phone bill or something. They will report you to Veda for not paying your phone bill. Telstra do it all the time - so over a $200 monthly phone bill, you'll get blacklisted and no one will ever lend to you. And the idea is that you then go for a loan, get rejected and then you ring Telstra and say "Okay, can I pay you back that $200 and then you can clear that smear off my report." So, it's a way for an unsecured creditor to hold something over you and try to get some leverage to make you pay them back.

A secured creditor probably won't hit your credit score straight away when you default on a loan because when you think about it, the best case scenario for them is you'll feel motivated to borrow off someone else. If you owe NAB $500,000 dollars on your mortgage and you want to go and refinance that with ANZ, then they'll be all for that. They're thinking "Oh please ANZ, lend them the money so that that money can pay us back and we're out of this - done deal." So they're not going to want to affect your credit score straight away because one of your options might be to refinance. Plus, they know that they've got the house or the property or some assets to sell first. They're going to sell that first and see what the actual shortfall amount is because that's what's relevant to them and they don't know what that is at this stage.

With your credit report, a bad listing can stay on there for five years and then it falls off. But your credit report should not be your primary concern because there are other things that you can do. It's a big wide world out there so don't let your credit report and a black mark on your name hold you to a no win debt situation. My credit report was shot to pieces but I was still able to trade and flourish for the ensuing five years. You don't know what you don't know but there are products out there you can utilise and still borrow with bad credit. One thing I discovered was that I could keep mortgages that I already had. There's a special product - not off the shelf with pamphlets that you can ask for – but one that, if you know what you want, you can ask a lender for. For example, Westpac have a product called a "portability loan" and what that means is that, you keep your existing loans. So how it played out for me was that I sold the security property, but the loan went into a term deposit account upon settlement and sale of the property and I was able to keep the loan alive and leap frog existing loans and buy new properties when I found them. So I could still keep trading from old loans as opposed to having to go to the bank with cap in hand sporting a bad credit report and having to try to borrow money from scratch all over again. That's just one example. The message is - please don't let your credit report hold you back for fear that you will never be able to borrow money again. You've got to sort out your bad debt problem and you can't just keep throwing good money after bad, paying the mortgage to keep a credit report shiny and new. There are credit repair places that can sometimes fix a report for you if it's been negotiated out. If you settle with the bank for less than what is owed (a negotiated solution), they can put on your credit report that "this debt has been paid and satisfied in full and final settlement of all matters between the parties" and it can fix your report.

Other lenders these days will lend to people with bad credit if you can explain it all and show them documents. So, there is an end game and the point is that you shouldn't be worried about or held to ransom over fear of a bad credit holding. It's something to consider but it's not the be all and end all and there are other options. You need to explore those and I can tell you more about that, if that's of interest.

The next big question many clients have is "Can they sue me?" - Yes, they definitely can sue you. But you know what? - anybody can sue anybody in law. It's a basic constitutional right and you can never ever contract out of that. A contract that says, 'You can't sue me' is illegal. That clause in the contract will be void. We all have our right to our day in court. Even the most vexatious litigants with the worst possible cases in the world still have the right to be heard and to argue their case before the court. So, anyone can sue you. It's scary because it's foreign to you but at the end of the day no one actually wants to sue anyone else. It is a last resort. So they're going to have to go to court if you do nothing. However, if you keep your enemies close, there's no point in them suing and we're going to talk about that in a minute. So don't let the fact that you can be sued be held over you either. You should not be thinking "Oh my God, I've got to keep paying and I've got to do this and do that or they'll sue me, they'll take me to court." It happens all the time. Court lists and court dockets are full of people suing people. Please remember that there's a difference in law between criminal cases and civil cases because we've all been brought up being told what's right or wrong and our parents say "You have to pay your debts when they fall due", we feel like criminals if for whatever reason we can't pay. I know I did. When you can't pay your debts - when you're broke - it almost feels like you're going to get arrested and taken to jail. Remember if this goes to court, it is not a criminal court case. This is what they call a 'civil court case'. It's two civilians fighting against each other over a commercial transaction, a contract - fighting over money. It's asking the court to arbitrate or to judge who owes how much to whom. It's not criminal. There are always defenses and arguments and that's why they've got to go to court to get that court order against you and you have the right to defend it in court. So that's not the end of the world either. It's just scary because it's different and beyond your usual daily experience but it's not the end of the world. Worst case scenario it is just another file with another number amongst hundreds of thousands of such matters every year!

The next questions then is usually "Can they bankrupt me?" And the answer is "Yes". If a creditor gets a court judgment or a court order for an amount more than $2,000 or $5,000 dollars, they can bankrupt a debtor. What that means is they issue a bankruptcy notice and it gives you time to come up with that money and it says, "Okay, if you haven't paid it within 28 days, you've committed an act of bankruptcy. It's deemed that you are broke and we can go to court and bankrupt you." We never ever want it to get that far because bankruptcy means that you lose all your rights. You can bankrupt yourself or another creditor can bankrupt you. There's two ways that it can happen. Don't ever go there yourself. There are so many more things you can do. Don't fall on your own sword and make it easier for them. Bankruptcy will be a last resort for them and they'll probably do it if they know they can get something out of you. If you've not kept your enemies close, if you put your head in the sand and they know you've got other assets, then yes, they may go to that last resort to get some money back. But bankruptcy is not a good commercial exercise for a creditor. The ATO and other bodies will do it to set an example to people and to punish them. But in terms of commerciality, lenders won't usually do it unless they know they can get something out of you. So if I've got a waterfront home and I've gone broke over a mining town property but I've got lots of equity in my waterfront home and I haven't got any asset protection, I haven't built that fortress around it to quarantine it, then bankruptcy might be an attractive option for my creditors. So, we're not going to let it get to that point but you should know that if you do nothing, that's a distinct possibility.

Please understand that there are two types of bankruptcy – the first is where you declare yourself bankrupt and fall on your own sword and wave the white flag and say “I can’t pay, I’m over and out” and you ask a trustee to be appointed to your affairs. The other type is where they come after you and try and bankrupt you. Either way, if somebody else, a trustee in bankruptcy stands into your shoes and takes over your affairs then you’re on the sidelines for three years. You have to hand in your passport, you can’t leave the country. It’s a serious thing that you don’t want to get to and many people get told by financial advisers and credit consolidation people “Just declare bankruptcy” or there’s a debt arrangement that’s almost like a partial bankruptcy under the Bankruptcy Act that you can enter into, a part nine arrangement or a part ten arrangement where you agree to payment plans with your creditor. Don’t go bankrupt, its complete loss of control. There are other ways. Think of it like a game of chess. It’s their problem too and you want to start a dialogue with them.

What are other things that they can do? Well, they can garnishee your wages. Garnishee means to intercept basically. So they can go to your bank and they can ask for your bank to pay over any cash in your account. They can send over the sheriff to your house to seize personal property. They can register a judgment or order on the title of real estate and sell that real estate like a second mortgagee, pay out the first mortgagee or pay out whoever’s on the title and pay themselves. There are lots of avenues that they have and if you understand that, the first thing you want to do is protect yourself like we talked about. The second thing is to explore other options.

So, there’s four basic options. At one extreme is do nothing. Just maintain the status quo, business as usual, keep paying, don’t change anything. That may be a possibility if you can trade through it and there’s some sort of upside. Yes, it’s a temporary problem, you’ve lost your job, you seek whatever you’re not earning and you’re struggling. But that’s not going to be forever. You’ve got a job next month and you’ll be able to pay again. Or the property’s going down in value but the market’s coming back and in a year’s time, it will be valuable again.

If you can’t do that, what’s the other extreme? Just default, do nothing and play dead. Just say “Sorry, I can’t pay anymore”. That’s one extreme as well but in between those are other things you can do. So, if it’s a property like a mining town property where it’s heavily underwater or upside down. If you owe the lender more than what the property’s worth, you can sell it yourself. I much prefer to stay in control. Now, we’ll talk about that in a minute. The lender is only going to sell the property anyway. They don’t want to do that. Banks are not in the business of selling houses. They’re in the business of lending money. So, if you can do the work for them, they’re only going to move in, get a court order, have to pay a load of time and money in court to get the order to be able to appoint an agent to sell the property. If you’re doing their job for them and keeping them close, they’re only too happy. Think of it like your nephew in our metaphor. You are the bank as the uncle or auntie. The nephew is you, the nephew has come to you and said “Look I’m really sorry, the business is going bad but let me tell you what we’re going to do. We got this property and this property, we’ve got this asset, I’m going to sell them and here you go, I’ve put an ad on Gum Tree for this asset and look, there’s a bit of interest. We can get 400 dollars for this or that asset.” As long as you know something’s being done, you feel okay. You would think “Look my nephew’s on top of this, he’s selling up assets, that’s all I’d be doing anyway and he’s keeping me in the loop.” Keep your enemies close, keep communicating and you can possibly negotiate for some sort of middle ground, some sort of package.

The last two options give you control and that’s what it’s all about. He who is in control will always prevail. What you don’t want to do is do nothing, hand it all over to the creditor or the lender and say, I don’t know, don’t know what to do, sort it out, because you’re then dependent on them and the outcome and that’s rolling the dice and hoping for the best.

So let’s look at doing nothing. If there’s no exit strategy, if there’s no way out that you can see when you’ve looked through all the options and all the angles, then doing nothing, maintaining the status quo is really not a sensible option. If your mining property or whatever is under water and there’s an 800,000-dollar shortfall on the property that will never ever be worth a million dollars again, then why go on for the next 20 years with that noose around your neck, keeping on paying a mortgage on a place in those circumstances is just dead money. That’s where you have to take stock and say, “Okay, this is uncommercial, I’m not going to keep doing this for 20 years, what's the shortest and fastest route out of this problem?" And you have to consider other options that I'll talk about in a minute. So ask yourself, will the property ever go up in value and come back to its current status? And if it won't within a property cycle, within five years or so, maybe even ten years, then forget about it.

Is there some other way that you can pay off the debt? Can you get a loan? Can you refinance? Is it doable? So, if there's going to be a hundred thousand dollars shortfall, is that something that you can live with? If the numbers just don't add up and you can never ever pay the loan back. If it's insurmountable and beyond your reach, then maintaining the status quo and trying to keep going is not an option.

If its credit card debt that has pushed you to crisis point, can you do a zero interest balance transfer? That's what I did with many of my credit cards. To get your business, a credit card company will say "Hey, transfer your Visa card, your current St. George Visa card over to a Bank West Mastercard where we'll pay out St. George the 9,000 dollars you owe and we won't charge you interest on that debt for 12 months or 2 years or something". The money you pay towards your credit card will go to reducing that balance. So if you're currently paying 200 dollars a month off your credit card and that's just interest but your balance and your debt is staying at 9,000, if you transfer to another zero percent card, then that 200 dollars a month is actually coming off the 9,000 dollars so you'll pay it off a lot sooner. Can you trade out of it that way? The important thing to do - and what I didn't do in some instances - is cut up the other credit card because once they pay out for example, the St. George card, the 9,000 dollars, you're going to have a card with a 9,000-dollar limit and if you're going to load that up again with more debt, you've just dug yourself into a deeper hole. But a zero interest balance transfer is the quickest way to get out of a credit card debt. And there are other ways but we're just talking now about maintaining the status quo.

The other thing you can do is just say "Well, I've run out of money, I'm missing my payment, over to you." Before you do that, is this situation so hopeless that you just throw your hands in the air? It may well be - if you're just throwing good money after bad and there's just no way out. If you're going to do that, make sure before you default that you've set up your asset protection. And if you haven't, do it now. The sooner, the better. Time is of the essence.

Is this the only solution? Is there some middle ground? Is there some other way out? I say there always is so you need to look at it from 20 different angles. Put it through a sieve as I say, rationally and logically and explore and work through every single option. There is always more than one option even in the most hopeless situation. It's not just a matter of black and white, dollars and cents and numbers. So let's look at middle ground options and let's say with our mining town example, you're 800,000 dollars in debt. You owe the bank a million dollars and the property's only worth $200,000 and the shortfall is going to be $800,000. The property's never going to be worth a million dollars again, what are you going to do? Well, you're going to contact your lender and you're going to say to them, "Hey", be like the nephew, - you are the nephew now- "This is our problem. We've got this mining town property together. You've got the mortgage, I've got the title or ownership. I know I owe you the money but guess what, the market's shifted and now, we've got a mutual problem. Our property's gone down in value. It's only worth 200,000, I owe you 800,000 dollars. Now here's what I propose we do. We can sell it …" and you've taken control there and they'd be grateful for this in the bigger picture because you're keeping them in the loop and you're handling it. They're going to want you to fill in a Statement of Financial Position. That's fine, we can do that. They'll give you a document and they'll say, "Tell us about your other assets, what have you got, is it really that hopeless? Isn't there something you can do? How about you sell this house and pay it off with that property or whatever?" So you're going to fill that form out. If you've got asset protection, it'll make a difference how you fill that out.

You'll make yourself a very, very small target. You're saying "Yes, it's absolutely hopeless, there's no other way" and they need to see that too, if they're the auntie or the uncle in this situation, they need to know that you're not bluffing: "Okay, so my nephew really has stuffed up and this is a hopeless situation."

What you're then going to do is you're going to get them appraisals. You're going to get them an agent appraisal from the area. Now, there are agents who are very experienced in mining towns and banks even know them: "Oh yes, here's that lady from Harcourts or LJ Hooker, she knows her stuff. She's doing 30 other local sales." The bank probably used those agents in the small mining town to sell their own repossessed properties. So what the agent will do - and they're used to dealing with banks - a good agent will write something to say "Hey, there are 70 other properties on the market and there are no buyers. I'm listing it, it will take 6 months to sell" and they will write a report for the bank and that's what the bank would be getting themselves once they repossessed and moved to sell the property, only you're doing it 6 months or 12 months ahead of when they'll actually have to go through the process. So you're saving them time and money and you're getting them facts and figures.

You want to give them too much information. Documents speak louder than words. Yes, you can shoot them an email, you can talk to someone over the phone but the best thing you can do is give them proof so you're going to do that. If you're filling in your Statement of Financial Position and you're saying that the situation's hopeless, "I've lost my job", give them a copy of your Centrelink statement to show that you've got nothing. If you're saying "Properties won't sell", give them that data. Give them an RP Data printout or whatever you've got, to prove that there's too much competition here, you can't sell, the property's only worth $200,000. Any documentation to support what you're telling them will go much further if you physically provide a copy of that document to prove your case. It's called, just out of interest, in psychological terms, 'The Aura of Legitimacy and the Principle of Least Effort.' People will do as little work as possible. So if you imagine that debt mitigation officer, the loss assessor in a bank, their job is to get all the information together. 'How broke is this person? Can we sell this property? How long will it take to sell it? What's it worth? What's the market like?' You're doing that for them and you're providing them with all of the documents they would otherwise need to get themselves. And if it's not just your word for it, if there's documents supporting it or things from third parties like an agent appraisal of the property, it has an aura of legitimacy and people won't need to go any further than that.

The Principle of Least Effort means that as a human being, if someone else gives you the data and all the facts and figures then you tend to rely on that. In law, I would always do that work for my opponent because then, I'm in control. I've given the information that I want him to have knowing that they'll be lazy and say "Oh too easy, sweet, thanks. I don't have to work that out, I now don't have to do that" and that gives me control because I've painted the picture and the scene, the landscape that I'd want them to see for my purposes to achieve my desired outcome.

Okay, now let's look at negotiating for some middle ground. I know that the lenders, the credit card providers, the banks can be scary. They're big, big organisations and if you go into a branch, you get the runaround, they ring head office, they'll tell you they can't help. Call centres are even worse. How do you get some leverage and some traction over these people? The good news is that since the global financial crisis, the whole industry is regulated and as the consumer, you actually have a lot of rights. We now have Alternate Dispute Resolution when it comes to complaints against banks. So what happened was that the 'Powers that Be' said "Well, hang on a minute, it's unfair. Banks are too powerful and the little guy doesn't have a chance and the only forum to hear a dispute is court and often when you're broke, you can't go to court. You can't pay to access the system." So they introduced in 2010 ASIC credit licenses. So after the global financial crisis, they said, "Hey banks have been a little bit irresponsible here. They've lent money to people who shouldn't have it and they've now caused a lot of pain and a lot of trouble." So they said, "ASIC is going to be in charge of credit licenses. So anyone who's going to lend money has to get a license via ASIC, from the government, and to get that license, they have to be a member of an Alternate Dispute Resolution Scheme (or "ADR").

There are two such ADR schemes in Australia. They're called "FOS" or The Financial Ombudsman's Service or the "CIO" – The Credit and Investments Ombudsman and in order to get a license, you have to be a member of one of those two bodies and their websites are www.fos.org.au and www.cio.org.au respectively. What that means is that it gives you massive leverage. You don't have to go to court. The ombudsman or ADR forum is not a formal court body. The ombudsman scheme is a very, very informal process but they help solve problems or disputes or issues that people have with their lenders.

Let's have a look at their website. Lenders have to pay to belong so that's the first step. The credit provider or financial services provider has to pay to belong to the scheme. They have to do that to get their credit license. It's compulsory by law that they belong to one of these two schemes. They pay, every time someone lodges a dispute against them, it costs them. However, it's free for you as a borrower and as a citizen. You can do it if it's an investment loan, you can do it for an insurance policy or claim, you can do it for all sorts of complaints. What it also means is that once you lodge a complaint, it stops recovery action. They just have to stop by law, they have to call off the dogs and they have to come to dispute resolution via the ombudsman. So it's illegal for them to keep calling you, to keep harassing you, to send process servers out after you or blacklist your credit report. Everything has to stop while the complaint is alive so it's great for you. It buys you some breathing space to sort through things and it makes them come to the table and talk to you. What happens is, when you lodge a dispute, straight away, they get notified as a credit provider – the ombudsman tells them that there has been a complaint made against them by a client. They get told "Okay, all bets are off, you've got 45 days, talk to this person, one of your clients and try and sort it out." That's what the ombudsman tells them and it's binding. They cannot legally keep chasing you, they cannot ignore the ombudsman. They'll lose their credit license, their ability to lend if they do. So what they will then do is their ADR department will contact you. There's a special ombudsman dispute resolution department within a lender, within a bank or whoever has lent you the money and they will call you and say, "Hey what's the problem? How can we sort this out?" If, within the 45 days, it's just not going to happen, you can go back to the ombudsman and say "Okay, we want a decision, we want your help." They have the power to forgive part of the debt or all of it up to a certain level. They've got a jurisdictional limit and they also have the power to order some sort of resolution. So they'll order a payment plan or give you time to sell the property or whatever it is that you're asking for.

You lodge a dispute via an online interactive form. See my accompanying webinar where I walk you through making a complaint via the FOS and CIO website.

Once you lodge a complaint (and it literally only takes 5 minutes – it is all automated) - it makes the lender contact you and you get to keep your enemies close and it freezes all recovery action. It gives you some breathing space to try and negotiate a solution and this body, the ombudsman will facilitate that. They'll organize conciliation. They'll go back and forwards between you and the bank, and it's free, and their decision is not binding on you. If they say, "You've got no case and the bank's right", worst case scenario, you say "Okay, I don't like that, I choose to ignore it." It is a very, very powerful body for you to use because there's no downside for you. It takes someone really big and powerful like the bank and brings them down to your level, it makes them talk to you, it will help you liaise with them to facilitate a solution and if you don't like where it's going, you get to walk away, no damage done, no money spent, no worse off and no questions asked. The decision of the Ombudsman's service IS binding on the lender. So if the ombudsman decides that the bank have to give you time to sell your property yourself, or they have to wipe 200,000 dollars off the loan because they never should have lent you that much in the first place and they want to put you in the position you were in before or whatever, then that can happen and once the Ombudsman makes the order, the bank can't go to court and say "Well, we're taking this to the High Court" and try to smoke you out with a whole lot of legal fees that you can't pay. They have to stick with the decision that the ombudsman makes. It's binding on them and as such it is very powerful for you.

So that is FOS. The CIO has a similar form and it goes straight to the lender and they'll ring you pretty much instantly or at least the next day if you do it at night. So you automatically get some wriggle room. Fill in the complaint form and ask for 'hardship relief'. They will then have informal negotiation, they'll tell the lender to try and sort it out with you, and they have trained mediators within each lending institution for these sorts of issues. These people are different from bank managers and credit file managers. These people are trained in dispute resolution so they will look at options with you. I found that they're definitely a better class of bank employee but if that doesn't work, the ombudsman can hold a conciliation. They do that by phone and it's like a mediation. You say "Look, I want to sell the property, there's going to be an 800,000 dollar shortfall. I told the bank I have no money. I can't pay this. Once the property's sold and we know the amount of the shortfall, we can work out a package or whatever." It buys you some time, some breathing space and keeps them close.

Now you don't have to go to the ombudsman if they are letting you sell a property yourself or they're letting you pay out a debt and you're happy with the negotiations you've handled yourself directly with the bank, then you can leave it at that. Just know that you can keep your powder dry. Know that you have got the ombudsman up your sleeve if things or the bank should ever go rogue.

The other thing that you'd want to remember is that even if you're going to default you may not be able to do that right away and have the leverage you need to negotiate with your lender. So some people say, "Well, I want to talk to the bank, I want to negotiate, I want to pay out my credit card but I don't want to pay them the 10,000 dollars in owing. I want to give them $4,000 in full and final satisfaction of everything." Lenders will do that - I paid out a lot of my credit cards for around 25 cents in the dollar. But they won't do it straight away. When they sense that there's money there, they're going to want to keep charging you and they're going to have people ringing you and saying things like "Just pay 10 dollars a week, just pay 20 dollars a week." Whatever they can get out of you, they're going to keep doing. To condition them and reverse that without getting a blacklist on your credit score, you may want to approach them and say "Hey, I know I've paid every month on time for the last ten years and I paid my mortgage and I know that you're not going to like this but I know I will be stopping next month." They'll say "No, no, no, no, no, you can't do that, your credit score will look bad with Veda." You can then lodge a FOS complaint. Condition them straight away before you default and cut to the chase. They cannot blacklist you on your Veda Credit Score while you've got a FOS financial hardship dispute or a CIO dispute on foot. They just can't do anything. So it makes them come to the table and talk to you and it will prepare them for the fact that you're going to default because if you paid last month and suddenly going to default this month, their first port of call is to try and make you pay this month. 'Keep the loan alive' - that is their first order of business. So going to the ombudsman makes them wake up and smell the coffee and realise that this gravy train can't go on forever and you're not going to be making your next payment and it gives you protection so that they don't just go feral and start blacklisting you. It gives you control. So it is a good way to condition them in that respect and get the right people within the lender talking to you and there are very, very good, highly trained people in the ombudsman's dispute department within a bank. So every big lender will have a trained sort of mediator to handle these disputes within themselves and you'll get a much better quality of answer and you'll get them engaged. They won't just treat you as a nuisance and tell you to get lost and have that "We're bigger than you and we'll do it our way" attitude. It's your tool, the David and Goliath slingshot to fight back and level the playing field.

I hope that this gives you a good overview of some options and the legal landscape when it comes to debt and how you can fight back and do it yourself and take control. The most important thing is to be in control. They're not bigger than you, they're not more powerful than you. The problem is theirs as well. However, you know it more intimately. They've got millions of clients and millions of files. You know exactly what you owe and what you can do about it. Hopefully, that gives you some leverage. If you haven't got asset protection, that's the most important first step or if you've already got protection with us and you're not sure where to go from here in unravelling things and sorting it all out, here are our contact details: Email support@masterwealthcontrol.com.au or phone (02) 9986 2228 to get protected, or to get a plan of attack and we will endeavor to help you.

Take care and remember, there's always options you just need to stay in control.