Loan Documentation and Closing Requirements

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Protect the Guaranty

- Lenders must close and disburse loans both legally and within SBA requirements
- Improper actions at closing can require SBA to deny all or part of guaranty purchase requests

Common Guaranty Problems

- Failure to verify required cash injection
- Failure to document use of proceeds
- Failure to obtain required lien positions
- Failure to verify financial information of borrower via IRS tax transcripts
- Imprudent servicing or liquidation actions, including failure to care/preserve collateral

Four out of the top five reasons involve loan closing and disbursement!

The Loan Authorization (L/A)

- The Loan Authorization (L/A) is issued after approval
- This is not a commitment, but a contract between the SBA and the Lender
- If you wish, you can prepare a separate Loan Agreement between the Lender and Borrower

The Origin of the Loan Authorization

- SBA Headquarters establishes the wording for all 7(a) and 504 standard authorization conditions.

- The current edition of the National Authorization can be found at **www://sba.gov.banking.**

Origin cont'd.

- The participant sets the terms and conditions for extending their credit.
- SBA establishes the terms and conditions for its loan or debenture guaranty using the current edition of the National Authorization

The Importance of the L/A to Closing

- The Loan Authorization sets forth the expectations of the Lender and SBA.
- It becomes a blueprint for closing.

Beginning the Closing Process

Upon Receipt of the L/A

- Review the Loan Authorization and give a copy to the borrower
- Resolve any discrepancies prior to closing
- Tackle Environmental, Franchise and Trust issues <u>early</u>

Modifications to the Loan Authorization

Should modifications become necessary refer to SOP 50-50 (4)

- Some changes are within your unilateral authority
- Some changes require only notification to SBA
- Other changes may require prior approval

Business Organization Verifications

- Corporate Name Verification (http://www.cis.state.mi.us/bcs_corp/sr_corp.asp)
- Verify corporate ownership
- Review Articles of Organization/Incorporation (Operating Agreement/By Laws)
- Check and file Assumed Name Certificates
- Verify Corporate Authority for borrowing
- Verify Authority of Trustee (for corporations owned by Trusts)

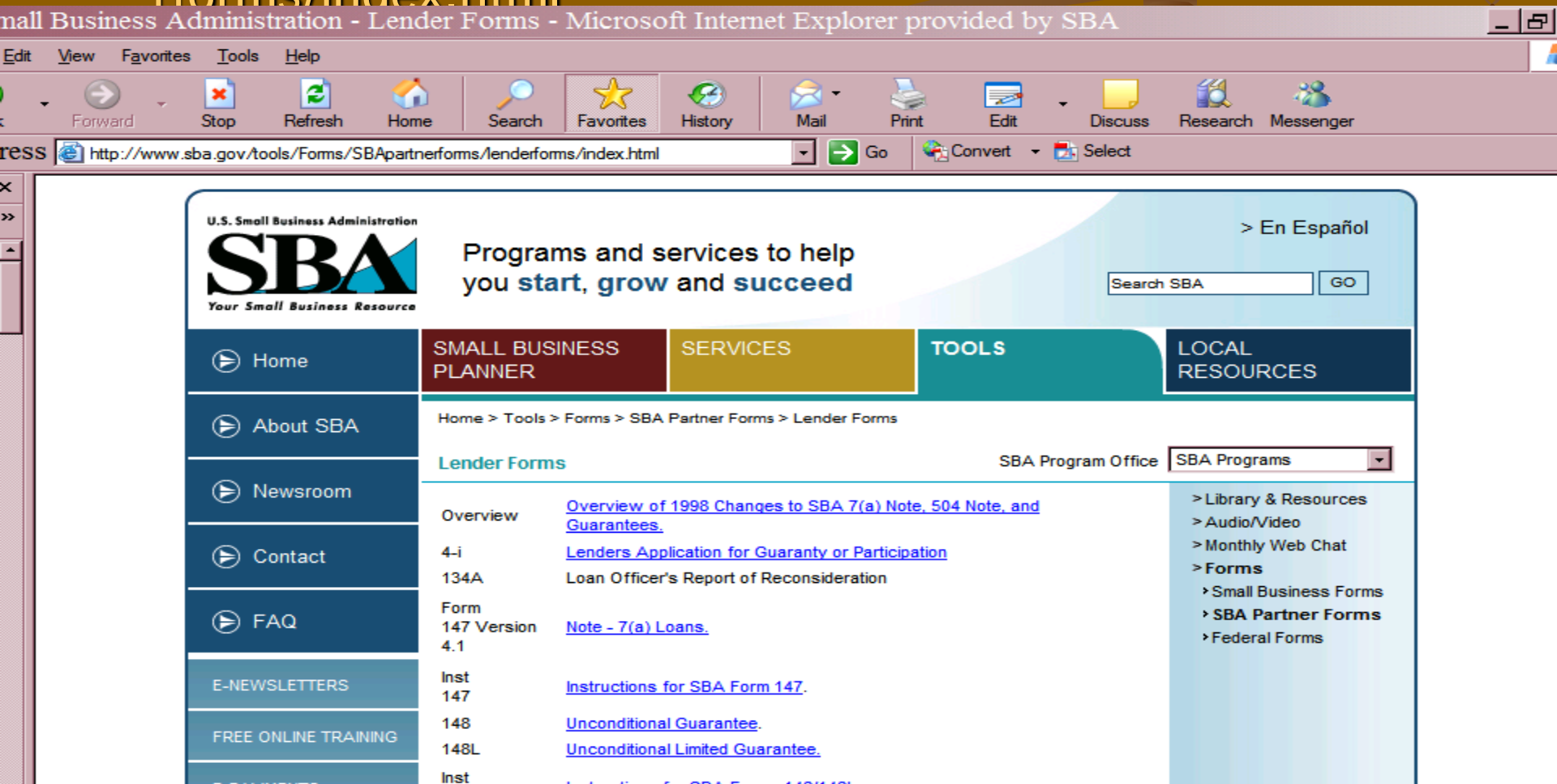
Preparing Loan Documents

Required SBA forms for Regular and PLP loans:

- **Note, SBA Form 147, version 4.1**
- **Guaranty, SBA Form 148**
- **Limited Guaranty, SBA Form 148L**
- **Settlement Sheet, SBA Form 1050**
  - **Required for first disbursement only**
- **Fee Disclosure and Compensation Agreement, SBA Form 159 (7a)**
- **Agreement of Compliance, SBA Form 601**
- **Equal Employment Opportunity Poster, SBA Form 722**
- **Tax Return Verification, IRS Form 4506-T**

Finding SBA Forms

- http://www.sba.gov/tools/Forms/SBApartnerforms/lenderforms/index.html



Examples of Available but Optional Forms

- Standby Creditor's Agreement, SBA Form 155
- Resolution of Board of Directors, SBA Form 160
- Certificate as to Partners, SBA Form 160A

Prior to the Closing Table

Document and Verify:

- Use of proceeds
- Equity injection
- Lien positions
- Transcript of Account
- Legal Entity Status
- Insurance
- Appraisal is in file
- Other L/A requirements

The Importance of Closing

Some of SBA's closing requirements are in <u>addition</u> to a commercial loan closing without a government guarantee.

Some closing missteps could result in "back end" problems with the guaranty.

Top 4 Closing Practice Tips to Protect Your Guaranty

1. Use of Proceeds:

- Settlement Sheet, SBA Form 1050, must be used to report the initial disbursement. However, Lender must fully document all disbursements and attach to 1050 form

- Joint payee checks should be used when possible; if not, lender should provide (1) invoices marked “paid”, (2) copies of cleared checks or (3) bank statements showing that the checks cleared

- Settlement Sheet and supporting documentation should match the “Use of Proceeds” section of the Authorization

Tips - Use of Proceeds

The documentation must contain sufficient detail for SBA to determine:

1. The recipient of each disbursement;
2. The date and amount of each disbursement; and
3. The purpose of each disbursement.

Tips (Continued)

2. Equity Injection:

   If the required injection is asset based, the lender should provide a list of the assets along with an appraisal. If the injection is monetary, the lender should provide cancelled checks and the borrower's bank statement dated *prior* to the loan closing date.

Tips (Continued)

3. Collateral Documents:

- Lien positions must match the “Collateral Conditions” section of the Authorization
- The Lender should provide a list of equipment and fixtures with a unit value of $5,000.00 or more
- When taking a lien on a motor vehicle, maintain a copy of the application for new title with the proper lien notation on the application

TITLE WORK

- Order Preliminary Title Commitments
- Ownership
- Liens
- Check for Encumbrances, Encroachments
- File Mortgages, Assignment of Rents and Leases
- Obtain final title polices
- Record Fixture filings

Tips - Collateral Documents

Uniform Commercial Code

- **UCC Searches**
- **UCC Filings**
- **Post-Closing UCC Searches**

Documenting the Security Interest

- FILE WHICH DOCUMENT? THE SECURITY AGREEMENT OR THE FINANCING STATEMENT (UCC-1)?
- ATTACHMENT AND PERFECTION
- UCC-11 SEARCH

The Double Dealing Debtor

- A files a UCC-1 against the double dealing debtor on March 1, 2010. B files against the same double dealing debtor on April 1, 2010. B makes an advance against the collateral on May 1, 2010. A makes an advance against the same collateral on June 1, 2010.

Who has priority?

The Double Dealing Debtor Continued

- A knew of B's interest when it made his advance. Who has priority?
- How can B protect itself from potential intervening liens?

Tips (Continued)

4. Insurance:

- If the Authorization requires an Assignment of Life Insurance as collateral, be sure that the Assignment is filed with the home office of the insurance company

- Have at closing, a copy of the hazard insurance policy or binder with the lender named as mortgagee / loss payee

- At closing you must have evidence that the property is not located in a flood hazard area or a copy of the flood insurance policy with lender named as mortgagee / loss payee

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EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
03/15/10

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

AGENCY
PHONE (A/C, No, Ext):

ABC Insurance Agency, Inc
1505 Blue River Road
Detroit, MI 48226

FAX (A/C, No):
E-MAIL ADDRESS:
CODE:
SUB CODE:
AGENCY CUSTOMER ID #: DAYCARE MI

COMPANY

Trailers Insurance Company
300 N. Michigan Avenue
Chicago, IL 60606

INSURED

DayCare Michigan, Inc.
38000 Northwestern Highway
Southfield, MI 48202

LOAN NUMBER: 46568160-10
POLICY NUMBER: AND580

EFFECTIVE DATE	EXPIRATION DATE	CONTINUED UNTIL TERMINATED IF CHECKED
03/15/10	03/15/11	☐

THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION

LOCATION/DESCRIPTION

38000 Northwestern Highway
Southfield, Michigan 48202

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Commercial building(s)	1,000,000.	10,000.
Other Structures	300,000.	10,000.
Personal Property	75,000	1,000.

REMARKS (Including Special Conditions) Total Premium $23,000.00

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER ~~WILL ENDEAVOR TO~~ SHALL GIVE ~~MAIL~~ 10 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW. ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.~~ 25

ADDITIONAL INTEREST

NAME AND ADDRESS		
Northern Bank of Michigan 35000 Northwestern Highway Southfield, Michigan 48202	✓ MORTGAGEE ✓ LOSS PAYEE	☐ ADDITIONAL INSURED
	LOAN # 46568160-10	
	AUTHORIZED REPRESENTATIVE John Smith	

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Life Insurance

- WHAT ARE THE TWO MOST IMPOTANT REASONS FOR TAKING OUT LIFE INSURANCE ON A BUSINESS LOAN?
- DO YOU WANT THE BANK TO BE THE BENEFICIARY OF THE POLICY?
- WHERE SHOULD THE ORIGINAL POLICY BE KEPT?
- HOW MUCH INSURANCE SHOULD BE PURCHASED?
- AT THE CLOSING YOU OBTAIN AN ASSIGNMENT. WHAT DO YOU DO WITH THIS DOCUMENT?

Flood Insurance

- All property including chattels and real property must be included.

- All SBA borrowers located in special hazard areas [as determined by the Federal Insurance Administration (FIA)] must purchase flood insurance <u>prior to first disbursement.</u>

Flood Insurance Continued

Use a qualified flood insurance preparer

The preparer will provide a certification that will:

1. Indicate if the property is within a special Flood Hazard Area.
2. Indicate if the property is within a participating community.

- What can you do if the answer to number 1 is yes?
- What can you do if the answer to number 2 is no?

Licenses/Titles

- Check for all appropriate business licenses
- Vehicle Titles, Manufactured Homes, Airplanes, Ships, Liquor Licenses, E T C.

DOCUMENTATION OF LOAN

- Ensure compliance with SBA guidelines
  - Follow requirements of the SBA Authorization Exactly!
- Ensure appropriate execution of loan documents (by appropriate persons/entities)
- Ensure appropriate execution of loan documents when there are multiple parties in various locations
- Preparation of Closing Statements
- Funding of loans
  - Disburse according to requirements in Authorization
- Coordination of funding and closing (i.e. mobile notaries, etc..,)