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## Difficult times might require credit changes

Companies need to protect themselves by ensuring they get paid.

Warning: your receivables probably are not worth what you thought (or wished) they were.

You have good, loyal customers who have been with you through good times and bad. These customers helped build your business. You recognize that we may be at the front end of difficult times and you don't want to do anything that might prevent a sale, so you continue to assume that good times are just around the corner and extend your company's credit as freely as Fannie Mae.

But don't forget you are in the lending business every time you don't get paid upon delivery or start work without a deposit in the bank. Now is the time to act before your customers' financial problems become your own.

Assume that every customer, old and new, may not have the ability to pay you when the invoice is due. If you act on this assumption, you can take the appropriate business measures to ensure that you have at least assessed the risk and put your company in a better position to get paid. On occasion, you may decide to pass on potential, but risky, business.

On the front end, conduct fresh credit checks on every account, old and new. Consider requiring your customers to submit a credit application that includes financial statements. You even might discuss the financial strength of the customer with their accountant or bank.

### GUEST VOICES



**Dan Elder (left) and Patrick Huffstickler are shareholders at Cox Smith Matthews Inc.**

These might sound like intrusive measures and inconsistent with your existing customer relationship, but remember you are extending your company's credit, and you are entitled to know whether your customer has the ability to meet obligations.

If you detect a problem, or the size of the credit is of such a magnitude that you want to take extra measures, consider whether it is appropriate to have the parent company or owners guaranty the obligation.

If you are dealing with a subsidiary, the parent entity is not responsible for the obligation unless you obtain a written guaranty. The same is true for the shareholders (for a corporation) or the members (for a limited liability company) or the limited partners (for a limited partnership).

Consider whether terms should be revised to require a deposit, prepayment or payment upon delivery. You also might require the customer to provide an irrevocable letter of credit, which essentially allows you to accept the credit of the issuing bank rather than that of the customer.

If you are selling products or goods on credit, make sure that the agreement with the customer provides for a security interest and the authority to file a financing statement, and then make sure that you do file a financing statement.

Make sure you have an enforceable interest provision within the contract, both to encourage timely payment and to compensate you for having to wait for your money. Work with your legal counsel to ensure that your agreements are clear, binding and enforceable.

Our San Antonio economy is still strong, but most of us rely on customers outside of our region for at least a portion of our business and, unfortunately, there are dangerous waters in the nation's economy. It is time to take prudent measures to assess and to mitigate the risk associated with selling our goods and services.

*Dan Elder and Patrick Huffstickler are shareholders at Cox Smith Matthews Inc. specializing in commercial litigation matters. If you have an idea for a Guest Voices column, contact Craig Thomason at [cthomason@express-news.net](mailto:cthomason@express-news.net).*