



MCA Dos and Don'ts

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Every situation is different. For legal advice on your MCA contract contact a licensed attorney. No attorney client-relationship is created by this article.

We have handled literally hundreds of Merchant Cash Advance ("MCA") defense cases in New York State courts. Based on our experience, we've developed the following general guidelines:

DO: Read the contract and get an attorney's opinion on the terms of your contract early on, ideally before a lawsuit is filed against you. Most people think that Merchant Cash Advance contracts are loans. They are not. They are complex financial instruments.

DO: Request reconciliation in writing when your business revenue declines and attach recent bank statements supporting your request.

DO: Notify your MCA in writing, providing supporting documentation, if the business has gone out of business. Notify the MCA immediately with supporting documentation if your business shuts down temporarily for any reason, such as a hospital stay, a fire, or a natural disaster.

DO: Have a licensed attorney negotiate for you if you run into trouble. MCA companies and their third-party debt collectors are notorious for being bullies and tricking people into signing bad settlement agreements. Once you sign a settlement agreement, it makes it impossible for an attorney to help you later.

DO: Keep enough cash in reserve to be able to hire an attorney if you are sued. Don't pay your last dollar to an MCA in a futile attempt to keep yourself out of trouble with them. MCA attorneys must be paid up front because the clients we're dealing with are often deeply in debt and a high credit risk. Keep \$5,000 to \$10,000 minimum in reserve as an initial retainer for hiring legal representation.

DO NOT: Rely on verbal communication or promises. Everything must be in writing (e-mails count as writings) it likely will not count at all in court. Also, the broker who initially got you the MCA is usually not an employee of the MCA company. Many times we see our clients have sent lots of texts back and forth with the brokers when things go south. These do not typically constitute written communication under the contract with the MCA funder and will not help you at all in court. The funder is who you have the contract with. Not the broker. Write to them (or better yet have an attorney write to them).

DO NOT: Put a hard stop on MCA payments with your bank. In many instances we've had clients come to us where we would have been able to help them if the account had merely bounced / gone negative, but because they put a stop payment on the MCA payments with their bank this is considered a breach under the contract. Unscrupulous "MCA debt relief" companies often advise people to put a hard stop on payments.

DO NOT: Pay money to an "MCA debt relief" company who promises to use those funds to negotiate and pay off your MCAs. When they fail to do their job, you will have no way of getting your money back from them and at most will be left with a potential lawsuit you could bring against them to get your money back. Often we see people come to us who have received terrible advice from these companies telling them to put hard stops on the MCA payments. Then, once they get sued, these "debt relief" companies disappear.

DO NOT: Continue operating your business at a loss or without enough funds left over to pay your MCAs or attorneys to negotiate and fight for you. You will be held personally liable for MCA debt, but the debt does not continue to accrue unless you are actually generating revenue. Too many businesses treat these contracts as loans they need to pay back and end up racking up way more liability on the contract than is necessary because they stay in business for too long. The face value of the contract is not the amount you owe. The percentage of your gross revenue is.

DO NOT: Try to negotiate on your own. You will never get as good a deal as if you are represented by a licensed attorney.