

Bankruptcy for a collection-proof senior citizen?

Senior citizens have contacted me to discuss the possibility of bankruptcy for them. Most of them have no assets that their creditors could get; they could "exempt" from creditors all of their assets. What do I say to them? First, I explain that although a creditor could sue them and get a court judgment, the creditor wouldn't be able to collect anything from them on that judgment. Which means that the usual reason for filing bankruptcy, to prevent creditors from taking their money and other assets, doesn't exist. They are what is often called "judgment proof" but is more accurately "collection proof". Is that the end of the conversation? Not really. There may be other considerations regarding their situation that aren't obvious at first glance. Here are some examples:

- **Estate planning** - A man (or woman, of course) has \$150,000 equity in a home, his only income is Social Security benefits, and he has not many other assets. That home equity is fully protected from creditors by California's homestead exemption (\$175,000 if you're 65 or older). He also owes \$140,000 in credit card debt. A Chapter 7 bankruptcy would discharge (get rid of) all those debts, but why bother since those creditors couldn't collect anything from him? Consider this ... If he has someone he wants to leave that house to when he dies, without a prior bankruptcy the house would be sold from his probate estate after he dies and his creditors would be paid from that money, leaving next to nothing to pass on. If he did a Chapter 7 bankruptcy before his death, there would be no debts at the time he died so the house would pass on to whomever he specified in his will.
- **Late-life planning** - Same situation as above but not necessarily with the wish to leave the home to someone. What if this person later needed to reach that equity in the house to pay for his living expenses, either by selling the house or by taking out a reverse mortgage? That \$140,000 of debt might be a serious obstacle to doing that. With that debt eliminated by bankruptcy, those options would be available.
- **The dangers of being collection-proof** - Yes, creditors may not be able to collect anything from you, but there can be complications. When a creditor gets a court judgment and the Sheriff's department is directed to levy on a bank account, they won't know whether or not the account has exempt Social Security benefits and the bank might not know that either. The money could be tied up for a long time if the person doesn't know what action to take to get the levy released. You still have to figure out how to get that money back (and probably pay an attorney to do it).
- **Stopping the aggravation** - Aggressive debt collectors can seriously bother someone for a long time. Bankruptcy stops that and provides peace of mind.

Only the person knows if it's worth the effort and expense of a bankruptcy in his or her situation, but the possible consequences of both ways, filing bankruptcy or not, should be fully considered.

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