

## **Can I Pay Back My Parents Before I File Bankruptcy? : Arizona Bankruptcy Attorney**

**By Arizona Bankruptcy Attorney John Skiba**

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When people fall on hard times they usually turn first to their family members for help. While I believe that it is good and appropriate for families to help each other out, it can cause problems in a bankruptcy setting. Below are a few of the most common scenarios I see and how to deal with them if you need to file for bankruptcy:

### **Money Loaned – Now Payments Are Being Made**

The money received from a family member during a financial crisis is no doubt appreciated and often used for things like groceries or to keep the lights on. It is natural that you will want to pay your family member back even if you can't pay the credit card payment. The problem this scenario creates in bankruptcy is called either a preference or a fraudulent conveyance. If you have been paying your family member back on monthly payments or have paid them a lump sum within the year prior (and sometimes two years prior) to the time when you need to file for bankruptcy, the bankruptcy court can treat those payments as fraudulent conveyances of your assets and undo the transaction. This is accomplished by the Trustee who is assigned to your bankruptcy case filing a law suit against your family member to bring those funds back into your bankruptcy case. This makes future family reunions very awkward.

So, what if you have already made the payment(s) to your family member and now need to file for bankruptcy? It is important to bring this up in your initial consultation with a bankruptcy attorney so that you can put together a plan to deal with the issue. If the amount of money paid to your family member was minimal (\$500 or less) it may not be a problem at all. If it is substantial, it may be worth waiting to file your bankruptcy. If it is somewhere in between, you may need to pay back to the bankruptcy court the amounts you paid to your family member in the year (and sometimes two years) prior to your bankruptcy. Most bankruptcy trustees will allow you to make payments over a 12 month period. This is not a perfect solution, but you will still be able to get your discharge (eliminating most if not all of your debt) and your family member won't get a federal law suit filed against them to recover the money!

### **Sold Family Member A Car – Didn't Transfer Title**

I see this scenario more often than you would think. One family member needs some help but instead of asking for a gift, the person in need offers to sell them a car, boat, quad, etc. The money changes hands but for whatever reason the title is never transferred to the purchasing family member. This creates a problem in bankruptcy for a couple of reasons. First, because the title to the vehicle is still in your name, on paper you own that vehicle and

it should be listed in your bankruptcy along with all of your other assets. This results in the possibility of losing that vehicle in the bankruptcy process. A second problem arises if the person filing bankruptcy decides to hurry and transfer title to vehicle right prior to filing their bankruptcy case. This runs into the fraudulent transfer problem I mentioned above.

Both of these issues can be overcome if you can show that there was an actual sale of the property. While most families don't draw up written contracts to buy/sell a car from each other (and it might be a little weird if you actually did!), usually we can piece together enough evidence to show that there was an actual sale with things like bank records or cancelled checks. Also, it is going to be necessary to show that you sold the vehicle for fair market value (or something close), otherwise the bankruptcy trustee may be able to undo this transaction by again suing your family. The reason behind this is to stop those people who think they can "sell" their 2010 Ford F150 to their brother for \$1,000 and then "buy" it back after their bankruptcy case is over. If it is a sale, it needs to be a real sale.

### **But I Don't Want To List The Debt Owed To My Family In The Bankruptcy!**

Because we generally enjoy get-togethers with our family members most do not want to discharge/eliminate the debt to a family member. It makes things awkward when you are sitting around the table at Thanksgiving and your brother is thinking of nothing but the \$25,000 you owed him that you discharged in your bankruptcy. Short of it is, you must list the debt owed to your family member in your bankruptcy documents that you file with the bankruptcy court. You are required to list all debts, regardless of who they are owed to. While your legal obligation to pay your family member is eliminated through a bankruptcy filing, you can voluntarily pay any of your debts back once your bankruptcy case has been discharged. This can allow you to move forward with a much needed bankruptcy and keep the peace at home.

I offer a free bankruptcy consultation where we can discuss your specific situation. Attorney John Skiba can be reached at (480) 464-1111