

Do's and Don'ts Prior to Filing for Bankruptcy

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When you have made the decision that it is necessary to file for bankruptcy the next step is to plan out when you are going to file your bankruptcy and all the steps that lead up to that day. Almost daily I meet with people who really need to file bankruptcy but have put themselves in a difficult position because of recent pre-bankruptcy transfers or failure to pay the "right" bills. Along those lines, I thought I would put together a list of Do's and Don'ts for those preparing to file for bankruptcy.

Do's

#1 Make your house payment. If you plan on keeping your car or your house through the bankruptcy process it is important that you continue to pay the monthly house or car payment. Even in bankruptcy you are required to make these payments if you want to keep the car/house. In a Chapter 13 bankruptcy there is a process whereby you can get caught up on payments you have missed prior to filing bankruptcy, but it will increase what you have to pay during your bankruptcy case. In a Chapter 7 bankruptcy failure to make your monthly payments will result in the bankruptcy court giving permission to foreclose on your home or repossess your car.

#2 File your taxes. If you have not filed your taxes, your bankruptcy case can be dismissed before it really even gets going. If you have tax returns that you have not filed, take the time to get them filed prior to filing your bankruptcy case. It will save you time, money, and aggravation.

#3 Prepare to meet with your attorney. The bankruptcy system is based upon your voluntary disclosure of all of your assets, income, expenses, etc. It is highly unlikely that someone will come to your house and check to see what you do and don't have, but if it is discovered that you have not been truthful you will likely lose your discharge (the entire reason you filed for bankruptcy), and could face fines and even jail time. Along those lines, it is important that you are prepared to disclose everything needed to file your bankruptcy.

With my clients I request quite a few documents and have a lengthy questionnaire that they are required to complete. These need to be completed as thoroughly as possible. To complete these thoroughly it may require you to find old tax returns, pay-stubs, titles or registrations to vehicles, bank statements. Be prepared to meet with your attorney by having a good idea what your assets, debts, and expenses really are.

Don'ts

#1 Don't pay a debt to a family member. I understand that thought process that goes into this one. You are going to file bankruptcy. You are going to eliminate your debts. Prior to doing that you want to make sure that the \$5,000 you loaned from your mother is paid back so you find some money and pay her in full. In bankruptcy world this is a bad idea and could result in your mom getting sued. Here's why. You

will be required to disclose any payments of more than \$600 you have paid any of your creditors in the last six months, and if you have made payments to a family member, you will be required to list any payments in the last year!

Payments to your relatives to the detriment of your other creditors are known as preferences and sometimes as fraudulent transfers. If you give money or assets to a family member, or if you repay them and no one else, you run the risk that the bankruptcy trustee will go to your family member and demand that they give the money back. If they don't, they will sue them, take the money, and divide it among your creditors. If you owe a family member, just let them know that you can always voluntarily pay them after your bankruptcy.

#2 Don't continue to use your credit cards. If you are looking to file bankruptcy you should stop using your credit cards. Any charges on your credit card totaling more than \$600 within the 90 days prior to your bankruptcy case are presumed to be nondischargeable. This means that they don't go away in your bankruptcy case. And when I say "totaling more than \$600," I don't mean a single purchase of more than \$600, I mean that the total of all your charges within that 90 days are more than \$600.

The bankruptcy code does state that these charges are only nondischargeable if they are for "luxury goods or services." While luxury goods or services is not defined, the bankruptcy code does tell us that good or services that are reasonably necessary for support and maintenance of your household do not fall into this category. While I will not advise you to incur new debt, I can tell you that in my experience that if you have bought a new big screen within the 90 days prior to filing that you may get an objection by the credit card company. If you bought gas for the car and diapers, you probably won't get an objection.

Also, if you take out more than \$875 in cash advances off your credit card in the 70 days prior to filing your bankruptcy case, those charges will not go away.

#3 Don't transfer assets out of your name. Like paying a family member, I understand the thought process to this one. You are filing bankruptcy; you would really like to keep your truck, so you decide to transfer it in to your brother's name while you go through the bankruptcy. Problem is, the drafters of the bankruptcy code thought of this too, and decided that it wasn't fair to your creditors to allow you to do this. So, if you transfer your truck into your brother's name prior to filing bankruptcy, the bankruptcy trustee will be able to go to your brother and undue that transaction and it is usually undone with a federal lawsuit (which makes Sunday dinner with the family really awkward from that point on!).

All transfers of assets - whether sold or given away - within the last two (2) years must be disclosed. Rather than taking that asset out of your name, talk with your bankruptcy attorney. Often it is not even an asset that is at risk, is exempt, or there is a deal that can be reached with the bankruptcy trustee and the transfer only makes things worse. Don't transfer assets.

If you have come to the conclusion that bankruptcy is necessary to help you with your debt problems, give me a call and we can go over your situation in detail. My bankruptcy consultations are always free. I can be reached at (480) 420-4028 or via email at john@skibalaw.com.