20 Costly Mistakes to Avoid When Thinking About Filing for Bankruptcy

MISTAKE #1: ***Taking out a second mortgage against your home, often called a home equity loan.*** You can't borrow your way out of debt. Many people hope to avoid bankruptcy by getting a home equity loan to pay off medical bills, credit card debt, and other obligations. And, not surprisingly, banks and other lenders make home equity loans sound attractive because they want to loan money. Later, people with home equity loans end up losing their home when they can no longer make the payments. If you're late paying medical bills or credit cards, the creditor can harass you, take a judgment, and potentially garnish your wages – and that's about all. When you're late paying a home equity loan, the bank can foreclose and throw you and your family out of the house. Don't trade unsecured debts for a home equity loan. The odds are good that if you file for bankruptcy, you will get rid of your debts and still be able to keep your home.

MISTAKE #2: ***Waiting until foreclosure or repossession to file for bankruptcy.*** Some people make payments for years, trying to pay off sky-high medical bills and credit card debt. Then, after a judgment is entered – or their car is repossessed – or their home foreclosed – they file for bankruptcy. You can avoid judgments, foreclosure and repossessions and still erase unsecured debt such as medical bills and credit card bills. Talk with the Fonfrias Law Group to avoid problems before they happen.

MISTAKE #3: ***Making payments you can't afford to make.*** It's this simple: Making payments you can't afford to make is money down the drain. Coming up with a few dollars to keep bill collectors happy puts you under a lot of stress. This temporary fix quickly overwhelms you because there are not enough dollars to keep all your bill collectors happy.

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MISTAKE #4: ***Transferring assets out of your name to keep them away from creditors or remove them from bankruptcy.*** Some people think they can protect property like homes, cars, jewelry and cash by giving it to a family member just before they file for bankruptcy. But, in fact, the bankruptcy trustee can recover these assets and you could be in trouble if the trustee determines that you intended to deceive him or your creditors. There are restrictions on pre-filing transfers; speak to the Fonfrias Law Group before doing this. Transfers like this almost always backfire on you and for the relative or friend to whom you transferred property. What's more, bankruptcy exemptions often protect property like your home, your car and your wedding rings.

MISTAKE #5: ***Repaying over $600 to family, friends or business partners before filing for bankruptcy.*** These payments are "preferences" and a trustee may seize the money and give it to all of your creditors. Do not pay a relative or friend significant amounts of money (more than about $600) within the year prior to filing for bankruptcy. Under state law trustees can look back even further.

MISTAKE #6: ***Trying to hide your assets.*** Some bankruptcy judges and trustees don't have a sense of humor. Don't assume you can get away with hiding prize collector cars or museum-quality oil paintings. The bankruptcy trustee may find out and you won't like what happens next.

MISTAKE #7: ***Borrowing money from relatives.*** Borrowing money from relatives puts a major strain on your relationship. And when you go through bankruptcy, you need the support of family members. What's more, you can't borrow your way out of debt. Unless you have a rich relative who will give you the money, it's much smarter to talk with a lawyer about modifying debts or filing bankruptcy.

MISTAKE #8: ***Using credit cards, and taking cash advances right before filing.*** Consumers figure if their debts are going to be erased, it doesn't matter how much they charge on their credit cards. Not true. You should stop using credit cards immediately because debts for luxury goods bought with credit cards within 90 days of the filing date, and cash advances over $750 obtained within 70 days of the filing date, are not dischargeable.

MISTAKE #9: ***Filing bankruptcy too soon.*** While it is usually better to file bankruptcy sooner, delaying may be to your advantage. For example, if you're considering divorce – expecting a large income tax refund – working to repay debts to family members – or if you have recently changed jobs, it might be better for you to wait. Make sure you talk with the Fonfrias Law Group to see if delaying your bankruptcy filing is in your best interests.

MISTAKE #10: ***Withdrawing money from your retirement accounts to pay debts.*** Many people use their retirement savings to pay off credit cards, medical bills, and other unsecured debt. This is a **bad** idea. If you qualify for bankruptcy, these debts can be reduced or erased completely. What's more, most pensions and retirement funds in qualified ERISA accounts are protected in bankruptcy. This means you may be able to erase your debts and keep your retirement account. Don't empty your retirement account in a futile attempt to catch up on bills.

MISTAKE #11: ***Reaffirming a mountain of debt.*** Sadly, all too often people reaffirm a loan or debt they could otherwise erase in bankruptcy. This may be done because the person feels a moral obligation to pay the bill. In other cases, the person wants to keep an asset, such as a car, on which they owe more than the asset's value. The purpose of bankruptcy is to erase your debts and get a fresh start. It serves no practical purpose when you agree to pay debts that the law allows you to discharge in bankruptcy.

MISTAKE #12: ***Neglecting to accurately list all of your creditors.*** Don't guess about the creditors you list on your bankruptcy petition. Make sure you list all of your creditors. If you make a mistake, you may be able to correct your petition later. Although there is case law that states a bankruptcy discharge applies to all unscheduled debts. But if you try to hide something or mislead the court, the bankruptcy court may decide not to erase the debt.

MISTAKE #13: ***Disregarding pending lawsuits.*** Some people assume that if they're planning to file bankruptcy, they don't have to respond to or appear in court for pending lawsuits. Not true. You need to respond to lawsuits and protect your rights and property until the bankruptcy court issues a stay, which bars lawsuits.

MISTAKE #14: ***Filing bankruptcy when you expect a tax refund.*** The amount of your exemption for tax refunds is limited. Talk with your bankruptcy lawyer to discuss how to handle your tax refund.

MISTAKE #15: ***Filing bankruptcy when someone owes you money.*** If you file bankruptcy when someone owes you money, the trustee will simply collect that money and pay it to your creditors.

MISTAKE #16: ***Having a large amount of money in your bank account on the day you file for bankruptcy.*** If you have more than a minimal amount of money in your bank accounts on the day you file for bankruptcy, the money may not be exempt from creditors.

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MISTAKE #17: ***Filing for bankruptcy when you expect to receive an inheritance.*** If you inherit within 180 days of the date your petition is filed, the inheritance is property of your bankruptcy estate, and must be disclosed in your filing; the date of the relative's death determines the timeframe. In Chapter 7 if the inheritance comes in the 180 days after you file, it will go to the trustee, less exemptions that might protect it. In a Chapter 13, the value of the inheritance will factor into your Chapter 13 plan payment.

MISTAKE #18: ***Thinking that bankruptcy is your last resort.*** I suggest you look at bankruptcy as a financial planning decision rather than a personal failing. You have the right to a fresh financial start whenever you want it. You do not have to wait until you've spent your home's equity or your pension before exerting your legal right to a fresh start. Think of it this way: If you cannot pay off all your debts (other than mortgages and cars) within three years, while living a modest lifestyle, then you should at least consider bankruptcy.

MISTAKE #19: ***Withholding information from your lawyer.*** You might think that you have a good reason for concealing information from your attorney. You may think that your lawyer won't understand your situation, or that by keeping quiet about an asset or an account, you'll be able to keep it. When you don't disclose everything, you tie your lawyer's hands and create serious risks. You could lose assets, have your bankruptcy case dismissed, or even face criminal charges. Plus, your lawyer may withdraw from your case if you are not completely honest with him. Your lawyer can protect your rights and property only when he has all the facts.

MISTAKE #20: ***Failing to attend your bankruptcy hearing.*** In most cases, you must attend one bankruptcy hearing. If you do not attend, the court could dismiss your bankruptcy, which means you lose that valuable legal protection and you go back to the same position you were in before the filing of bankruptcy.

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