

I paid back my mother money I owed her, and now I need to file bankruptcy

I've been running up a lot of debt and can't pay it back. I wanted to make sure I paid my mother the money she loaned me, so I paid her back. Now I want to file bankruptcy to get rid of my other debts.

In the immortal words of astronaut Jim Lovell, commander of the Apollo 13 spacecraft in 1970, "**Houston, we have a problem**".

[What's the problem?](#)

The problem is that you paid back an "insider" (family members are definitely insiders), while you were insolvent (owed more than you could pay back), **within one year before you want to file bankruptcy**. That payment to your mother would be what is called a **preference payment**, a payment favoring a particular creditor (someone you owe money to) over other creditors.

[OK, so what's the real problem?](#)

The real problem is that the trustee assigned to your bankruptcy case **can sue your mother to get that money back** to pay to your creditors. And you don't get to apply "exemptions" (amounts you can protect from creditors) to that money because you can't exempt what you don't have.

[Wow, that's the last thing I want to happen! What can I do about it?](#)

The best thing to do is to **wait to file your bankruptcy until one year has passed** since you paid your mother.

[What if I really need to file bankruptcy now? Would the trustee really sue my mother? After all, she's already spent that money so it's gone.](#)

There is really no way to know for sure if the trustee would sue your mother to recover that money. It depends of the amount you paid her (less than \$600, no problem; a few thousand dollars, who knows; many thousands of dollars, plan on a lawsuit). It may also depend of how the trustee views his/her chances of your mother having enough money or property to collect from. So lots of "maybes" here. **Definitely discuss this with your bankruptcy attorney.**

[Why did I do such a dumb thing?](#)

Because you wanted to protect your mother (a noble wish) and didn't know any better.

[How could I have avoided doing that?](#)

By consulting with a bankruptcy attorney as soon as you realized that your financial situation was going in the wrong direction. By not waiting until the last minute, as many people do, to consult with a bankruptcy attorney. This stuff isn't simple, so give yourself the best chance of doing things correctly.

If you had read this short article first, you wouldn't be in the situation you're in.

[Can I pay my mother what I owe her before I file bankruptcy?](#)

Malcolm Ruthven
Attorney at Law
San Francisco Bay Area
415.342.4666 Fax 415.869.6645
mruthven@mruthvenlaw.com
ca-bklaw.com



Click [bankruptcy](#) for more information from [Malcolm Ruthven](#)