

Do I Have to be Deficient to File Bankruptcy?

Must I be deficient to file bankruptcy? Can I file bankruptcy if I am not yet behind on my bills?

Questions like these are seen pretty darn frequently around my office. To be honest, I am not sure where this misconception started. Perhaps these potential debtors have previous experience with loan modification, which can require a period of default prior to negotiations. Regardless, I am here today to shout from the rooftops that you don't need to be in default to file for protection under the bankruptcy code.

Now, there are a few important points to consider. First is simply that filing for bankruptcy is a serious decision with very serious consequences. At this risk of sounding like your mother, bankruptcy is not a decision that should be taken lightly. It is rarely decided upon overnight. Therefore, even if you first consider filing for bankruptcy protection prior to default, your financial position may be remarkably different by the time you decide to file.

The second point is simply a little trick to think about. If you are committed to filing for bankruptcy protection in the near future, perhaps default is not a bad thing. That is, there may not be reason to continue paying on your UNSECURED debt, if your intention is to erase that debt in bankruptcy.

Finally, please pardon me while I step up on my soap box. Please don't think that, in order to file bankruptcy, you need to be in a dire financial position. I have seen too many debtors spend down retirement accounts and other Arizona exempt assets in an attempt to prevent bankruptcy, only to file in the end. I really hate to see that.

As always, I am a [bankruptcy lawyer](#) available for free consultations in [Tucson](#), [Phoenix](#) and [Casa Grande](#). Please don't hesitate to contact me if you would like additional information on filing for bankruptcy in Arizona.