

Don't Pay Your Family Members Before Filing Bankruptcy: How to Avoid a Preference

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When writing articles for my [bankruptcy blog](#) I try to come up with a catchy title (and don't often succeed). With this one, I thought I would get straight to the point. Filing for [bankruptcy](#) is rarely a last minute decision. The lead up to the actual filing for most takes weeks, months, or even years. There eventually comes a point when the decision is made and you determine that yes, you are going to file for [bankruptcy](#).

Once the decision to file [bankruptcy](#) is made you will no doubt start to put together a game plan, compiling lists on debts, assets, and the like. Then it hits you, you owe your parents, brother, grandparents (insert any family or friend) money and you certainly don't want their debt to go away during your [bankruptcy](#). This would make Sunday dinner or the family reunion very awkward! So, you decide to get some money together, pay that family member off, then go meet with your bankruptcy attorney and move forward with the bankruptcy filing. Or so you thought...

Enter the avoidable preference. If you owe a family member more than \$600 and pay them back in the twelve months prior to your bankruptcy filing, the bankruptcy trustee can go and get that money back from your family member and divide it up amongst all of your creditors. This is where things can get awkward with the family. Here in Arizona the bankruptcy trustee usually sends a letter to the family member who received the funds and explains that they money they received (and have often already spent!) is actually part of your bankruptcy estate - and they want it - now. If your family member can't or won't turn it over, the trustee can use the power of the bankruptcy court to compel them to turn it over.

So what happens if you have paid a family member back but you still need to file for [bankruptcy](#)? The impractical answer is to wait for twelve months from the time when the payment is made. While most plan out the timing of their bankruptcy most don't do it a year in advance and many people need immediately to stop a [garnishment](#), [lawsuit](#), or simply to [stop the telephone calls](#).

In those situations you can go ahead and file and then offer to pay the trustee the amounts you paid the family member. You will have to pay these out of exempt assets or future income. The bankruptcy trustee doesn't care whether the money comes from the recipient of the money or from you, so long as it is paid.

The best way to avoid having to deal with these types of issues is to meet with a bankruptcy attorney early on in the process and learn the [Do's and Dont's](#) of pre-bankruptcy preparations. If you are anticipating needing to file for bankruptcy, give me a call at (480) 420-4028. My bankruptcy consultations are always free. You can also get me via email at john@skibalaw.com.

Image Credit: www.awkwardfamilyphotos.com (don't go there, it sucks you in and you will spend the better part of the day looking at pictures).