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9 QUESTIONS TO ASK BEFORE FILING BANKRUPTCY

It is important that you ask the right questions prior to filing bankruptcy. Below are some important questions you should ask when considering whether to file. The answers will also help you best prepare your case.

Talk to your experienced bankruptcy attorney to walk through each of these questions.

1. Should I file bankruptcy?
2. Do I have enough debt to qualify for bankruptcy?
3. How does my income affect my filing for bankruptcy?
4. What will happen if I don't file bankruptcy?
5. Does my spouse have to file with me?
6. Will I lose my home? Car? Personal property?
7. What debts are unable to be discharged?
8. How will this affect my credit?
9. Will I have to go to court?

1. SHOULD I FILE BANKRUPTCY?

Only you can answer this common question. While an attorney can explain the pros and cons of filing a bankruptcy and tell you which way they lean on the decision, the choice to file is your choice and yours alone. You should take any legal advice and make an informed decision based on what you need, can afford, and can stand to lose. Once those aspects of the possible bankruptcy are analyzed, you should be able to make a wise decision.

2. DO I HAVE ENOUGH DEBT TO QUALIFY FOR BANKRUPTCY?

Many debtors are under the mistaken assumption that there is a threshold of debt that they must meet before they can file bankruptcy. This can lead to them needlessly delaying their filing. The bankruptcy laws do not have a minimum requirement of debt as it recognizes that what may seem manageable to one debtor may be too much for another debtor. The rule of thumb that every debtor should apply is: Can they pay it off in a reasonable time frame? Can they afford to make their debt-related payments each month without hardship and without neglecting a necessary payment? Those answers will determine whether the debt is high enough.

3. HOW DOES MY INCOME AFFECT MY FILING FOR BANKRUPTCY?

This question is not asked by enough debtors inquiring about bankruptcy. Many debtors do not realize that bankruptcy laws require a debtor to qualify for a Chapter 7 bankruptcy based on their income. As Chapter 7 is the preferred chapter for most debtors due to it being much more affordable, this can be a real sticking point for debtors. A debtor's best chance of qualifying for Chapter 7 is if their income is at or below the median income of a household of the same size in the same state. Debtors who do not pass that threshold can still file if they pass the "Means Test." This is a test that takes into account your income over the last six months and certain expenses that the court deems necessary.

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4. WHAT WILL HAPPEN IF I DON'T FILE BANKRUPTCY?

Many debtors who are on the fence ask this question before making a final decision. The answer to the question is that it depends on the situation. If you are facing a lawsuit of some type (credit card suit, foreclosure, or vehicle repossession), then the lawsuit will proceed and eventually lead to a judgment in favor of the creditor in most situations.

After the judgment is obtained, the creditor will try to collect on the judgment. This can be done in multiple ways: garnishment of wages or freezing and seizing a frozen bank account are the two main examples. If a property was secured by the creditor in the debt being sued upon, then the property will most likely end up being transferred back to the creditor. While some creditors may not pursue collecting on their debt, they will very likely sell the debt to someone who will and has spent significantly less money on the debt, which leaves them some money to use in order to be aggressive on collecting the debt. Unless you have an alternative avenue to repay your creditors in a reasonable time, these types of aggressive collection practices will very likely be used against you.

5. DOES MY SPOUSE HAVE TO FILE WITH ME?

Many married debtors ask this question. In many situations, only one of the married couple has debt issues and the other has good credit and has their creditors, if any, under control. In situations like that, the spouse without the debt issues will not have to file bankruptcy. The court does not require married debtors to jointly file bankruptcy with their spouse.

There are some spouses who only have joint debt or have some assets that are jointly held. These debtors will most likely file together as husband and wife because it is easier, cheaper, and in most situations provides greater protection than filing alone. The trustee, appointed by the court to represent the interests of the creditors, will inquire as to why the non-filing spouse did not file bankruptcy with their spouse. In some rare occasions, a spouse may be forced to join the bankruptcy case. However, that is not the case in most situations. It is very important that spouses know their debt situation before agreeing to join a bankruptcy or deciding to be a non-filing spouse.

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6. WILL I LOSE MY HOME? CAR? PERSONAL PROPERTY?

Every case is different. The answer here will depend on how much you owe, who you owe, and how much you own. An experienced bankruptcy attorney will be able to use all of the bankruptcy laws and exemptions available to help you keep your assets.

If you have non-exempt assets, talk to your bankruptcy attorney about whether it's best to file a Chapter 7 or Chapter 13 bankruptcy. You may also want to do some pre-bankruptcy planning and consider the timing of your bankruptcy petition. For example, if you make more money in the summer months, it might make sense to file your bankruptcy petition towards the end of winter so that you have less income and assets.

Remember, do not transfer or give away any assets to friends or family before filing for bankruptcy. This will not help your case and can cause a lot of trouble. Speak to your bankruptcy attorney before making any decisions about assets.

7. WHAT DEBTS ARE UNABLE TO BE DISCHARGED?

Unfortunately, not all debts are discharged in bankruptcy. While the vast majority of debts are dischargeable, there are some that aren't. Student loans are the best example of a debt that cannot be discharged. While there is a very small exception that rarely arises, the majority of student loan debts will remain official debts and will not be discharged despite being listed on a bankruptcy.

Child support and alimony owed are other examples of situations where the debts cannot be discharged. Another type of debt that is sometimes not dischargeable is unpaid tax. Old tax debt may be dischargeable, but there are specific timing rules that apply. If you file your bankruptcy case even 1 day too early, you could miss out on your chance to wipe out this debt. Also not dischargeable is any debt that is owed due to criminal behavior. An example would be restitution owed for a crime of which the debtor was convicted. Debtors should make sure they know whether their debts can be discharged before they file.

8. HOW WILL THIS AFFECT MY CREDIT?

The biggest concern debtors have about filing bankruptcy is how it will affect their credit in the future. As all debtors who are filing bankruptcy should know, a bankruptcy will be on their credit report for a minimum of seven years. But, that does not mean that you will be unable to get credit during that time.

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Most debtors will improve their credit upon filing bankruptcy because their credit score was not that great prior to filing. In addition, after filing bankruptcy, their credit report will show that they have much less debt than they did prior to filing bankruptcy. While getting a home loan may take a while after your bankruptcy case has closed, three years being the average length between discharge and new home ownership, it is a pretty reasonable time frame all things considered. Car loans are much easier to get after the case has closed and numerous credit card offers are sent to clients while they are in bankruptcy.

It will be up to the debtor to determine how they rebuild their credit and to make the right decisions, but the credit will be there. Talk to your bankruptcy attorney about the best strategies for rebuilding credit quickly after bankruptcy.

9. WILL I HAVE TO GO TO COURT?

Debtors are always nervous about the court procedure in bankruptcy. While there are certain issues that can necessitate going to court (accusations of fraud or a disputed payment plan), most debtors never enter a courtroom during their bankruptcy.

However, you will be required to appear at the 341 meeting of creditors. This is a meeting that is an official hearing, where you will be sworn in under oath and your testimony is recorded, but the meeting is rather informal and a much less stressful environment than a normal court appearance. The trustee, appointed by the court to represent the interests of the creditors, will ask you questions in an attempt to see if there is any money to recover that they can distribute to the creditors. As this is a federal hearing, the penalty for lying while under oath in a bankruptcy meeting can be harsh, so it is always best to tell the truth. The meeting itself is normally short. An experienced bankruptcy attorney should be able to prepare you for the questions you will face at the meeting.