

When to File Bankruptcy? – Timing Your Bankruptcy Filing

By Arizona Bankruptcy Attorney John Skiba

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Properly determining when to file your bankruptcy can help you maximize the benefit of filing bankruptcy. Because of this, it is helpful to meet with a bankruptcy lawyer early in the decision process of determining whether to file for bankruptcy or not. I offer a free bankruptcy consultation for this purpose, so we can sit down, go over your situation, and determine if bankruptcy is a good option and if so when we should file the bankruptcy to maximize its benefit. The following are a few scenarios that are associated with bankruptcy and how they can impact the timeline of when to file your case:

Foreclosure

In Arizona the foreclosure process is not a quick one. Generally, once you have missed four payments or so the bank will send you a Notice of Trustee's Sale, which is the document that has the date on which the bank intends to auction off your home. The soonest the bank can sell your home is 90 days from the day they give you that notice.

Filing bankruptcy will stop the foreclosure of your home. As soon as your bankruptcy case is filed the court will issue an order stopping any collection efforts against you or any of your property. This means that the trustee's sale set on your home will be vacated. It is important to note that stopping the foreclosure sale happens immediately upon filing of the bankruptcy case. This means that if your house is set to be auctioned off at noon, you could literally file your bankruptcy case at 10:00 a.m. that morning and it would stop the sale (although your bankruptcy lawyer will highly appreciate it if you don't wait until the last minute!).

Wage Garnishment

Often wage garnishment is the last straw for many people when determining when to file their bankruptcy case. In Arizona once your creditors obtain a judgment against you, they can garnish 25% of each paycheck and all but \$150 in your bank account. A bankruptcy filing will stop wage garnishment immediately. If you are facing a wage garnishment it is important to file the case quickly so that you don't risk losing those funds. It is important to know how far in advance your employer processes payroll, because often employers will process payroll several days in advance of payday, meaning that your bankruptcy case would need to be filed well before pay day to stop a garnishment from occurring.

Lawsuits

Once you have been served with a lawsuit, meaning that a process server has actually appeared at your door and handed you the complaint and summons, you have 20 days to submit a written response to the lawsuit. If you fail to do this, the creditor will be able to get a default judgment against you and then you will be dealing with the garnishment situation described above.

As soon as your bankruptcy case is filed the lawsuit against you must stop. This means that if you filed your bankruptcy prior to the expiration of the 20 days, you would not need to file a written response because the lawsuit would stop. Also, if the lawsuit has progressed to the point where a judgment has been entered against you, chapter 7 bankruptcy will void the judgment and eliminate the underlying debt.

Credit Card Use

I recently wrote an article on the dangers of credit card use immediately prior to your bankruptcy filing. Basically these fall into two categories, (1) using credit cards to buy luxury items within 90 days prior to filing your bankruptcy case, and (2) taking cash advances on your credit card within 70 days prior to your bankruptcy filing.

Basically, if you buy luxury items that total more than \$550 within the 90 days before you file bankruptcy, or if you take a cash advance of more than \$825 within the 70 days prior to your bankruptcy, those debts may not go away through the bankruptcy process. If you have significant purchases or cash advances on your credit card, it may be better to wait an additional 90 days prior to filing your bankruptcy case.

Fraudulent Transfers/Preferences

Another fairly common issue that I deal with is transfers of assets to relatives. If you have given away a significant asset to a family member within the year before your bankruptcy filing it may be better to wait to file your bankruptcy until it has been more than a year since that transfer. The reason being is that in effort to stop bankruptcy debtors from simply transferring all of their assets to family members and then filing for bankruptcy, they have a rule in place that allows the bankruptcy trustee to go back and get that asset from whomever you gave it to and then sell it and pay the money to your creditors.

This also applies to the repayment of loans to family members. If you borrowed \$5,000 from a family member to keep the bills paid, and now have been paying this family member back over the last few months, it may be necessary to wait to file your bankruptcy case, otherwise you may have to pay back the amounts that you paid to the family member to the bankruptcy trustee.

If you are thinking that a bankruptcy filing is going to be necessary, it is important to meet with an Arizona bankruptcy attorney to discuss what the options are and when the appropriate time to file your case would be. Most people can file in a relatively short period of time while for others it may benefit them great to wait.

I offer a free bankruptcy consultation where we can discuss your specific situation and help you put a plan together to get back on track.

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