

Getting What You Need From Bankruptcy

The United States Supreme Court once said that the principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor'. This reminds me of a Rolling Stones song that tells us that "You can't always get what you want. But if you try sometime, you find you get what you need." This sentiment is often true in bankruptcy and sometimes debtors have unreasonable expectations of what bankruptcy can do for them.

In any type of bankruptcy, I tell potential clients that the 4 most important elements of any possible bankruptcy case are: (1) income; (2) expenses; (3) assets; and (4) debts. This information tells me what type of bankruptcy the debtor may wish to file, what property they might lose in a bankruptcy proceeding and what debts the court will discharge. While the vast majority of my clients keep nearly all of their assets, there are limits to what bankruptcy can do and sometimes debtors must make necessary sacrifices.

I have seen debtors fall behind on their house payments while paying hundreds of dollars per month keep luxury items such as a motor home, a boat or a vacation home. Bankruptcy is a court of equity and clean hands, so debtors cannot expect to walk away from tens of thousands of dollars in credit card debt while shelling out excessive payments to keep luxury items like a yacht or a second home. If a debtor is unwilling to make the necessary lifestyle changes and budgetary adjustments, then qualifying for bankruptcy will be an uphill battle.

If an "honest but unfortunate debtor" files for bankruptcy, chances are they won't get everything they want. The desert toys and the fancy SUV with the \$950 payment may need to go away. But if the debtor follows the rules, they make get what they need: debt relief and a fresh start.

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).