

Don't Give It Away – Beware of Transferring Assets Prior to Filing Bankruptcy

By Arizona Bankruptcy Attorney John Skiba

www.skibalaw.com

Despite the George Strait song, you can't just "give it away" when it comes to bankruptcy. A common question I get in bankruptcy consultations is whether you can simply "give" away your assets to a family member or take your name off of the title to a vehicle or home prior to filing bankruptcy.

This question usually arises when someone is looking to file a [chapter 7 bankruptcy](#), the reason being that in a chapter 7 bankruptcy you can lose non-exempt assets. The bankruptcy trustee can seize them and sell them to pay your [creditors](#).

Generally the answer is no, you should not transfer any asset or give anything away prior to filing bankruptcy. If you do the [bankruptcy trustee](#) will likely view that as a fraudulent transfer and go after that asset. In the case of a transfer of an asset to a family member the procedure for getting the asset back is for the bankruptcy trustee to sue the family member to get an order requiring them to turn over the asset. Having the federal government sue your family over an asset you gave them makes future family reunions very awkward. The look back period on such transfers is two years.

Selling Property Prior to Bankruptcy

My general advice to avoid transferring assets prior to filing bankruptcy applies mostly to situations where you are literally giving away property and not receiving anything in return. You can however sell property prior to bankruptcy so long as you receive fair market value for whatever it is you are selling.

For instance, you can sell your car prior to your bankruptcy filing, but if the car is worth \$5,000, you are going to need to get somewhere near that number – you can't sell it for \$500 without running into possible issues in the bankruptcy court. But if you get approximately what it is worth, then you will generally be fine when it comes to filing bankruptcy.

I offer a free consultation where we can discuss your specific situation and determine if bankruptcy is a good option for you.

[Arizona bankruptcy attorney John Skiba](#) can be reached at (480) 420-4028 or via email at john@skibalaw.com .