

Can I Sell My Stuff Before Filing for Bankruptcy?

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One of the drawbacks to filing chapter 7 bankruptcy is that you may lose some of your stuff. Chapter 7 bankruptcy is a liquidating bankruptcy – meaning if you have assets that you own free and clear of any liens *and* that are not protected under one of Arizona’s exemption laws, then in chapter 7 you could lose them. For instance, in Arizona there is no exemption for ATVs. So, if you own a Yamaha Banshee (my favorite ATV), in bankruptcy the trustee could require that you turn the Banshee over, they will sell it and then give the money to your creditors.

Often there is a way for you to be able to keep your stuff and file chapter 7 bankruptcy. In Arizona many of the bankruptcy trustees will allow you to keep your asset if you will agree to pay the value of the asset so that it can be distributed to your creditors. So, with the example above, if your Yamaha Banshee is worth \$3,000 you could offer to pay the trustee \$3,000 (or some other offer I will help you come up with) and keep the ATV. Most chapter 7 trustees in Arizona will even allow you to make that in payments.

But what if the idea of paying the trustee for the stuff you own doesn’t seem like a great idea to you? There are other options – you can sell the asset before your bankruptcy case is even filed. If you transfer any asset out of your name prior to filing bankruptcy you can count on that transaction receiving scrutiny. However, if you follow a few simple guidelines you can sell assets and still file chapter 7 bankruptcy.

#1 – You Can’t Give it Away.

Did you know that bankruptcy is mentioned in the United States Constitution? Bankruptcy laws, in one form or another, have been around for a long time. Because of this, any way you can think of to try and hide an asset has been thought of by many people before you and the bankruptcy laws have evolved to prevent such behavior. Not

that you would/should ever think of hiding an asset (seriously, don't ever try and hide an asset – it will not end well.)

The first important point is that you cannot give away assets prior to filing for bankruptcy. You cannot have your brother “hold” your boat while you go through bankruptcy by transferring the boat into his name. Such transfers must be disclosed and they will require your brother to return the boat so that it can be sold and the money used to pay your creditors. If your brother doesn't return the boat the bankruptcy trustee will sue him to get it back. And nothing ruins future family reunions like a federal lawsuit between brothers.

You can't give stuff away. Don't do it. If there is an asset you are worried about, talk to your bankruptcy attorney. There are often other solutions. One of them is to sell the asset prior to filing your bankruptcy case...

#2- You Can Sell Your Stuff

If the thought of paying for your stuff twice (once when you bought it and a second time to the bankruptcy trustee) doesn't sit well with you, it may be a good idea to sell your asset prior to filing your bankruptcy case. You can sell things like cars, ATVs, boats, etc., so long as you sell them for fair market value and an actual sale takes place.

For example, if your Yamaha Banshee is worth \$3,000 so long as you sell it somewhere near that price you will be fine. If you sell it to your brother for \$500 that is not fine and will result in additional problems in your bankruptcy. You must sell the asset for approximately what it is worth.

Next, an actual transaction must take place. You must actually sell the item and cash must change hands. It must be a real sale. No trickery.

Now What Do I do With All This Money?

Asset is sold, problem solved. Right? Not yet. In Arizona you are not permitted to have more than \$150 on the day you file for bankruptcy. If you have more than that the bankruptcy trustee will take it and give it to your creditors. So what do you do with the \$3,000 you just got for the Banshee? That is something you and your attorney will need to go over. You can use it to buy general living items like groceries, tires for your car, car repairs, etc.. You can put it in a retirement account like a 401(k) or IRA. You could even pay your bankruptcy lawyer with it!

The point of this article is if you are needing to file bankruptcy – particularly if you are looking to file a chapter 7 bankruptcy – you need to meet with a bankruptcy lawyer to discuss all the details of your situation and how best to protect your assets while going through the bankruptcy process.

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