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How to File Bankruptcy Without a Social Security Number



Many individuals often wonder whether an illegal immigrant may file for bankruptcy and/or whether a social security number is required to file bankruptcy. [11 USC 109](#) states that a person that “resides or has a domicile, place of business, or property in the United States, or a municipality, may be a debtor (petitioner, bankruptcy filer, person who wants to file bankruptcy) under this title.” (explanation of debtor added). Although there are certain limits for entities such as railroads, etc. there is nothing in this section, or the bankruptcy code, that requires you have a social security number to file bankruptcy. In order to accommodate this, an individual without a social security number should complete, and sign, a document titled a [Statement of Social Security Number](#). Even though the document is titled a “Statement of Social Security Number,” it allows for a filer to provide for either a social security number, an [Individual Taxpayer Identification Number \(ITIN\)](#), or state that the filer does not have either a ITIN or social security number. It is actually very easy to get an ITIN number. These are provided by the Internal Revenue Service so that those who can't get a social security number, but must report income and pay taxes, can do so.

Despite these rules, it may be very difficult, if not impossible, for an illegal immigrant, or someone without a valid social security number, to file bankruptcy without either a social security number or an ITIN. As will be discussed infra., if an illegal immigrant uses, or has

used, someone else's social security number, it is still very likely that you will not be able to file a bankruptcy petition.

With regards to the first issue (filing without a social or an ITIN), [Rule 4002 of the Bankruptcy Procedures](#), among other rules, requires that a debtor bring proof of identity to the meeting of the creditors. As a practical matter this means that a debtor without a social security number must apply for, and obtain, an ITIN. Accordingly, while you are allowed to file without a social security number, it is imperative that you obtain an ITIN to ensure that you provide acceptable proof of identity at the meeting of creditors. As an aside, it is also very important that, based on [11 USC 109](#) that an individual be able to show proof of residence, such as a valid lease.

With regards to the second issue (filing with a ITIN, but previously using someone else's social or a made up "fake" social), it should initially be noted that, pursuant to [42 USC 408\(a\)\(7\)\(B\) and \(C\)](#), it is a crime to use a fake social security number or use someone else's social security number. This is why it is imperative that you not use a fake social security or someone else's social security number in your bankruptcy petition. If you have previously obtained a loan, filed tax returns, or otherwise utilized the social security number for financial purposes, then other issues can arise with your bankruptcy filing.

Most importantly is filing a bankruptcy petition with an ITIN where the filer has utilized a different social security number on his or her tax returns. A Trustee will certainly notice this discrepancy and it will be in stark contrast to the tax returns. This could automatically tip-off the trustee that there has been a violation of [42 USC 408\(a\)\(7\)\(B\) and \(C\)](#). Further, you will be making the criminal case for the government despite your [right to remain silent](#) since bankruptcy filings are useable in other proceedings. Thus, anyone that has used a false social security number on previous tax returns should not file a bankruptcy unless they have filed tax returns utilizing the ITIN for the applicable periods.

Most importantly, from an attorney's perspective, is that debts obtained by fraud are non-dischargeable [under the Bankruptcy Code](#). Although many attorneys may not agree with me, it is my opinion that if someone gets credit or a loan using someone else's social security number, then the individual has committed a fraud on that creditor (obtaining property by misrepresenting their identity) and will not be able to file for bankruptcy (if the credit was obtained with a fake, or "made up" social, then it is arguable that the credit was not obtained through fraud since there was no such misrepresentation). Further, an attorney that files a bankruptcy knowing that the credit and/or loan was obtained through the use of a fake social security number could face ethical sanctions for violations of the [Illinois Rules of Professional Conduct](#) since this could be viewed as assisting a client in committing a fraud in violation of said rules.

Next, as mentioned, bankruptcy filings are useable in other proceedings. A bankruptcy petition where a debtor files taxes with a false social security number, a statement of no social security number, and/or a statement of an ITIN number could potentially result in immigration consequences. This is extraordinarily unlikely under current immigration procedures and I have never, ever, ever heard of this happening in the entire time I have practiced as an immigration attorney. In most cases, the risks to the client are more palatable than the alternative for many clients and an attorney should use his judgment in deciding whether it is worth proceeding in an appropriate case. However, a client must be made aware that this is a possibility even though it is almost never going to happen.

However, these filings will almost certainly be used against an immigration client if they have faced criminal prosecution by filing a bankruptcy with a false social security number. It is worth mentioning nobody can force you to obtain a social security number if you have no right to one. As such, do not use a false social security number or a fake social security number under any circumstances and obtain an ITIN as soon as possible to file taxes. This should be done even if you do not want to file bankruptcy to avoid potentially serious criminal consequences.

As this article should demonstrate, anyone wishing to file a bankruptcy that does not have a valid social security number faces very difficult legal questions and hurdles. It is impossible to discuss every possible scenario in this article and, for anyone that is in this situation, it is imperative that you speak with an attorney immediately regarding your particular case.

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-Drake Shunneson (copyright 2012)

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