

Family, Friends and Bankruptcy

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It's pretty straight forward. If you're in my office or considering bankruptcy, you are experiencing some financial hardship.

Most people consider bankruptcy a last resort. This is due to the stigma surrounding bankruptcy based on misinformation perpetrated by so called "experts" and the [irrational fear that "bankruptcy will ruin your credit."](#)

When going through a troubling time, most people will reach out to family and friends for support and guidance. That's what friends are for right?

Money is borrowed in an attempt to get out of debt.

Unfortunately, family and friends can only do so much and typically it's not enough to resolve long term financial hardship. Bankruptcy becomes the most logical and necessary course of action despite your best efforts.

In bankruptcy, monies borrowed from and/or paid back to those closest to you could bring to the surface certain issues that need to be addressed.

Monies Borrowed

When you file bankruptcy, you are required to list all of your creditors. The disclosure requirements in the bankruptcy law are serious, strict and failure to disclose will most likely lead to failure to discharge.

Aunt Michelle and Uncle Joe are no different than Capital One or Chase. You owe them money than they are a creditor and must be listed on your bankruptcy petition.

I am often asked if it is possible to leave out a family member or friend from the creditor list and simply "not mention it."

You sign your bankruptcy petition under penalty of perjury. [Violating the bankruptcy law is quite a serious matter](#) so my answer is always "no."

I will follow that up with a simple "don't worry," you can always choose to voluntarily pay back any creditor you like post bankruptcy. You do not have to "stiff" Aunt Michelle or Uncle Joe or Capital One for that matter. .

Monies Paid Back

This is where that holiday dinner could get awkward.

Debts paid back to family members or friends (or other "insiders") within one year of filing bankruptcy are classified as preferences. Essentially, you showed preferential treatment to certain creditors to the detriment of the others.

The bankruptcy law makes these types of preferences "avoidable." This means that the trustee can go and "claw back" that money from the family member to distribute it evenly amongst all of your creditors.

Ouch!

Most people considering bankruptcy are facing foreclosure, repossession, daily creditor calls and/or pending [wage garnishments](#). There is usually not enough time to let that one year statutory period expire.

If you have paid back a family member or friend within the one year period, you can still file but must be prepared to pay that amount to the trustee.

The best way to avoid this situation and other pre-filing problems is to consult with an experienced bankruptcy lawyer as soon as you start to run into financial problems.

Do not listen to so called “financial experts” and “do gooders” who have financial advice for you.

It is so important to [filter out the excess noise](#) when dealing with financial distress.

Unfortunately, this is easier said than done.

I am a consumer defense lawyer. I focus my practice on consumer credit issues including debt settlement, foreclosure solutions and financial rehabilitation through personal bankruptcy.