

The 10 Steps to Take Prior to Filing Bankruptcy

By: David M. Green, Esq.



Bankruptcy is very often a time-sensitive process and pre-bankruptcy planning can be critical in protecting assets. Chapter 7, in particular, the trustee's responsibility is to "look back" at the actions the debtor has taken to insure that there hasn't been a fraudulent conveyance of assets, a non-allowed preference payment to creditors or other actions that might leave assets exposed. It's critical, if you are considering bankruptcy, to consider taking the following steps to insure a successful filing:

1. Consult with an attorney.

The bankruptcy laws have become so complex that consumers should not attempt to file by themselves. It's a very risky process to try to do on your own. Since 2005, there is a complicated "Means Test" required, government-approved credit counseling, as well as other changes which made the filing of Bankruptcy much more complicated. Even if you eventually file pro-se (representing yourself) consult an attorney and ask questions about whether bankruptcy is the right alternative for you.

You want an attorney that's there to solve your problems and sees bankruptcy as one of the alternatives. This is particularly critical if you have assets (Home, Car, Cash) that have to be considered and your debts are substantial and varied. If the attorney's recommendation is still to file for bankruptcy, ask what the benefits are and the costs.

"Helping Good People Through Tough Times for Over 20 Years"

Contact us Today for a Free No-obligation Consultation

1-800-284-0144

Info@bankattorney.us

www.LongIslandBankruptcyAdvice.com

Twitter: NYBankruptcyEsq

Facebook: New York Bankruptcy Attorney

2. Get Your Paperwork in Order

When I meet with clients, it is often the case that their paperwork, be it bills, taxes, etc. are not organized in any good manner. This makes it much more difficult and time consuming to evaluate a client's case. Therefore, it is a very strong suggestion to collect all statements from bill collectors. Go online and get complete addresses of creditors who may have stopped billing you. Check the balances at financial institutions where you bank. Look at your recent tax returns to provide your gross income over the past three years. Basically, get to know your assets and liabilities and have them written out and organized for your lawyer to prepare your case.

The more complete you can be in providing a list of your creditors, the less problems or headaches you will have from creditors after your bankruptcy case is over. Once you know that you are going to file, start to save all correspondence that arrives from creditors, collection agencies or others who are trying to collect on a debt. The disclosure requirements have become more stringent so you want to make sure that you have forwarded all of your creditor information to your attorney. If you are unsure of exactly who you may owe, you may want to consider acquiring a copy of your most recent credit reports. Each year you may request a free copy of your credit reports from the three major credit bureaus reporting companies. Those are TransUnion, Equifax and Experian and they can be obtained by going to www.annualcreditreport.com. Even if you are unaware of the creditors listed on your reports, provide those to your attorney anyway. When you seek credit after your filing for a mortgage, auto loan, or personal loan, you want to be able to show that all of the items on your credit report were listed and discharged in your bankruptcy case. The rule to remember is that everyone who is owed is listed on your bankruptcy petition and schedules.



"Helping Good People Through Tough Times for Over 20 Years"

Contact us Today for a Free No-obligation Consultation

1-800-284-0144

Info@bankattorney.us

www.LongIslandBankruptcyAdvice.com

Twitter: NYBankruptcyEsq

Facebook: New York Bankruptcy Attorney

3. Stop Using Your credit cards or incurring more debt.

Once you have decided to file a bankruptcy you should stop using credit cards or borrowing money immediately. If you continue to incur new debt prior to filing, it could prompt an objection from the creditor and you may be forced to repay the money. Any recent purchases or advances can be held still due and owing after you file bankruptcy. The rationale is that you never intended to pay those debts back and is tantamount to fraud. If you're seeking a fresh start, do your best to insure that you will in fact receive that fresh start. The credit card issuers are very aware of attempts to run-up the charges on credit cards. This also applied to cash advances. If you take a cash advance so close to filing bankruptcy, you are likely to see an objection from the credit card issuers. The objection comes in the form of an adversarial complaint. If the creditor is successful in their objection, the amount of the recent advance(s) will be held due and owing after your bankruptcy case.

4. File your taxes

You must file your most recent year's taxes to qualify for Chapter 7 bankruptcy relief. Although this seems like a simple requirement, you would be amazed at the number of individuals who have not filed their most recent taxes. A copy of the return will be forwarded to your assigned bankruptcy trustee after your case is filed. You must also provide your most recent tax return to any creditor who requests it. Please be prepared to produce the last 2 years returns, both state and Federal.



"Helping Good People Through Tough Times for Over 20 Years"

Contact us Today for a Free No-obligation Consultation

1-800-284-0144

Info@bankattorney.us

www.LongIslandBankruptcyAdvice.com

Twitter: NYBankruptcyEsq

Facebook: New York Bankruptcy Attorney

5. Provide your most recent pay advices

You must provide the most recent 60 days worth of paycheck stubs at the time your case is filed. These will be forwarded to your assigned bankruptcy trustee or may be filed with the clerk of the bankruptcy court. This measure is in place to make sure that the amount listed on the petition for monthly income is in fact accurate. If a person receives income from a source other than employment, evidence of that income must be provided just as if a paycheck stub. Once you are aware that you are likely going to file bankruptcy, keep copies all of your paycheck stubs in an organized manner.

6. Don't sell, give away or transfer ownership of anything prior to filing your bankruptcy case without first discussing it with your lawyer, including money owed to family members.

Doing so could allow a bankruptcy trustee to go after the property. Money paid to family members and friends within one year prior to your bankruptcy can be recovered by the bankruptcy trustee. If the amount paid is small, the bankruptcy trustee probably will not care, but it is wise to be cautious. Transferring ownership of property to pay a debt owed to someone could allow the bankruptcy trustee to get the property back as a "preference" payment. Remember, a key concept in bankruptcy is that all of your creditors are entitled to your non-exempt assets equally, this applies to money owed to friends or family members as well.

7. Don't leave assets off your bankruptcy forms, including lawsuits or claims you may have.

The only way to exempt an asset and protect it from the bankruptcy trustee is to list it and exempt in under the applicable New York exemption law, federal exemption law, or other state exemption laws if you have not lived in New York long enough. Intentionally leaving out an asset is a federal crime. The much better choice is to candidly talk about all of your property with your lawyer, through proper pre-bankruptcy planning much can be done to protect assets. If this is not possible perhaps a chapter 13 bankruptcy could solve the problem. Also, if you do not list your claim or lawsuit you may never be able to bring that suit in the future!

8. Don't take money out of retirement plans, IRA's or 401K's.

Under almost all circumstances, money in a retirement account is protected from the trustee when you file bankruptcy. However, if you withdraw money from the retirement account, it most likely loses its exempt status and the money may no longer be protected. Talk with your lawyer

"Helping Good People Through Tough Times for Over 20 Years"

Contact us Today for a Free No-obligation Consultation

1-800-284-0144

Info@bankattorney.us

www.LongIslandBankruptcyAdvice.com

Twitter: NYBankruptcyEsq

Facebook: New York Bankruptcy Attorney

about this if you really need to withdraw some money. Be particularly careful of taking a loan on a retirement account, as they are almost never dischargeable in bankruptcy.

9. Be careful filing bankruptcy if you are expecting a large tax refund.

An income tax refund is considered “cash” under the Bankruptcy Code and a bankruptcy trustee can take most if not all of your refund, if not careful. The better choice is to postpone your bankruptcy if you can, receive the refund, then talk with your lawyer about where to spend the money that will not get you in trouble. This will take some planning and may delay the filing, but pre-filing strategy can be critical.

10. Be Careful putting your name on any Asset.

Don't put your money into someone else's bank account or put your name on someone else's account. A lot of people put their name on their elderly parent's account “just in case.” This is usually a bad idea. If you want to be able to help mom or dad in case of disability or illness, a power of attorney is probably a better choice. Remember: any asset with your name on it is YOURS, even if you never use it (Car title) or contribute to it (bank account).



Make sure to be fully candid with your lawyer. Your lawyer cannot give you good advice if he or she doesn't know all the facts.

“Helping Good People Through Tough Times for Over 20 Years”

Contact us Today for a Free No-obligation Consultation

1-800-284-0144

Info@bankattorney.us

www.LongIslandBankruptcyAdvice.com

Twitter: NYBankruptcyEsq

Facebook: New York Bankruptcy Attorney