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9 QUESTIONS TO ASK BEFORE FILING BANKRUPTCY

1. SHOULD I FILE BANKRUPTCY?
2. DO I HAVE ENOUGH DEBT TO QUALIFY FOR BANKRUPTCY?
3. HOW DOES MY INCOME AFFECT MY FILING FOR BANKRUPTCY?
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It is important that the debtor ask the right questions prior to filing bankruptcy. Below are important questions a debtor should ask when considering whether to file. The answers will also help the debtor who decides to file how to best prepare their case.

1. SHOULD I FILE BANKRUPTCY?

Only the debtor can answer this common question. While an attorney can explain the pros and cons of filing a bankruptcy and tell you which way they lean on the decision, the choice to file is the debtor's choice and their choice alone. A debtor should take any legal advice and make an informed decision based on what they need, can afford and can stand to lose. Once those aspects of the possible bankruptcy are analyzed, a debtor should be able to make a wise decision.

2. DO I HAVE ENOUGH DEBT TO QUALIFY FOR BANKRUPTCY?

Many debtors are under the mistaken assumption that there is a threshold of debt that they must meet before they can file bankruptcy. This can lead to them needlessly delaying their filing. The bankruptcy laws do not have a minimum requirement of debt as it recognizes that what may seem manageable to one debtor may be too much for another debtor. The rule of thumb that every debtor should apply is: Can they pay it off in a reasonable time frame? Can they afford to make their debt-related payments each month without hardship and without neglecting a necessary payment? Those answers will determine whether the debt is high enough.

3. HOW DOES MY INCOME AFFECT MY FILING FOR BANKRUPTCY?

This question is not asked by enough debtors inquiring about bankruptcy. Many debtors do not realize that bankruptcy laws require a debtor to qualify for a Chapter 7 bankruptcy based on their income. As Chapter 7 is the preferred chapter for most debtors due to it being much more affordable, this can be a real sticking point for debtors. A debtor's best chance of qualifying for Chapter 7 is if their income is at or below the median income of a household of the same size in the same state. Debtors who do not pass that threshold can still file if they pass "The Means Test." This is a test that takes into account your income over the last six months and certain expenses that the court deems necessary.

4. WHAT WILL HAPPEN IF I DON'T FILE BANKRUPTCY?

Many debtors who are on the fence ask this question before making a final decision. The answer to the question is that it depends on the situation. If the debtor is facing a lawsuit of some type (credit card suit, foreclosure, or vehicle repossession), then the lawsuit will proceed and eventually lead to a judgment in favor of the creditor in most situations.

After the judgment is obtained, the creditor will try to collect on the judgment. This can be done in multiple ways: garnishment of wages or freezing and seizing a frozen bank account are the two main examples. If a property was secured by the creditor in the debt being sued upon, then the property will most likely end up being transferred back to the creditor. While some creditors may not pursue collecting on their debt, they will very likely sell the debt to someone

who will and has spent significantly less money on the debt, which leaves them some money to use in order to be aggressive on collecting the debt. Unless a debtor has an alternative avenue to repay their creditors in a reasonable time, these types of aggressive collection practices will very likely be used on them.

5. DOES MY SPOUSE HAVE TO FILE WITH ME?

Many married debtors ask the above question. In many situations, only one of the married couple has debt issues and the other has good credit and has their creditors, if any, under control. In situations like that, the spouse without the debt issues will not have to file bankruptcy. The court does not require married debtors to jointly file bankruptcy with their spouse.

There are some spouses who only have joint debt or have some debt that is jointly held. These debtors will most likely file together as husband and wife as it is easier, cheaper and in most situations provides greater protection than filing alone. The trustee, appointed by the court to represent the interests of the creditors, will inquire as to why the non-filing spouse did not file bankruptcy with their spouse. In some rare occasions, a spouse may be forced to join the bankruptcy case. However, that is not the case in most situations. It is very important that spouses know their debt situation before agreeing to join a bankruptcy or deciding to be a non-filing spouse.

6. WILL I LOSE MY HOME? CAR? PERSONAL PROPERTY?

Most debtors understand that assets and personal items can be lost in a bankruptcy. However, most debtors don't know what can be taken, what is protected and what falls in between. Bankruptcy provides debtors a way out of debt, but it is not a free ride as so many people claim it to be. In addition to the bankruptcy's effect on your future credit, there is another price to pay for some debtors. A debtor, by filing bankruptcy, states that they cannot pay their debts and need help. The court answers by allowing them to file bankruptcy.

However, the court has an obligation to protect creditors too. If a debtor's assets are so much that the exemptions that protect their personal property cannot fully cover the equity in the property, then that non-exempt equity needs to be paid to the bankruptcy estate so it can be distributed to the creditors. This becomes more of an issue in a Chapter 7, as the timeline to repay the non-exempt equity can be short and costly upfront. In a Chapter 13, the debtor will have to pay the same amount of money to keep the property, but will have three to five years to pay it off. Every state has different exemptions to protect the personal property of the debtor and each state varies on how well your assets are protected.

7. WHAT DEBTS ARE UNABLE TO BE DISCHARGED?

Unfortunately, not all debts are discharged in bankruptcy. While the vast majority of debts are dischargeable, there are some that aren't. Student loans are the best example of a debt that cannot be discharged. While there is a very small exception that rarely arises, the majority of student loan debts will remain official debts and will not be discharged despite being listed on a bankruptcy.

Child support and alimony owed are other examples of situations where the debts cannot be discharged. Another type of debt that is usually not dischargeable is unpaid tax. While there are exceptions based on certain timelines and on certain types of IRS debts, there are other types of tax debts that will stay with the debtor even after filing bankruptcy.

Also not dischargeable is any debt that is owed due to criminal behavior. An example would be restitution owed for a crime of which the debtor was convicted. Debtors should make sure they know whether their debts can be discharged before they file.

8. HOW WILL THIS AFFECT MY CREDIT?

The biggest concern debtors have about filing bankruptcy is how it will affect their credit in the future. As all debtors who are filing bankruptcy should know, a bankruptcy will be on their credit report for a minimum of seven years and a maximum of ten years. During that period, creditors will have knowledge that you have previously filed for bankruptcy.

Most debtors will improve their credit upon filing bankruptcy due to how awful their credit score was prior to filing. In addition, their credit report will show that they have much less debt than they did prior to filing bankruptcy. While getting a home loan may take awhile after your bankruptcy case has closed, three years being the average length between discharge and new home ownership, it is a pretty reasonable time frame all things considered. Car loans are much easier to get after the case has closed and numerous credit card offers are sent to clients while they are in bankruptcy.

It will be up to the debtor to determine how they rebuild their credit and to make the right decisions, but the credit will be there.

9. WILL I HAVE TO GO TO COURT?

Debtors are always nervous about the court procedure in bankruptcy. While there are certain issues that can necessitate going to court (accusations of fraud or a disputed payment plan), most debtors don't enter a courtroom during their bankruptcy.

However, debtors are required to appear at the 341 meeting of creditors. This is a meeting that is an official hearing, as debtors are sworn in under oath and their testimony is recorded, but the meeting is rather informal and a much less stressful environment than a normal court appearance. The trustee, appointed by the court to represent the interests of the creditors, will ask the debtor questions in an attempt to see if there is any money to recover that they can distribute to the creditors. As this is a federal hearing, the penalty for lying while under oath in a bankruptcy meeting can be harsh, so it is always best to tell the truth. The meeting itself is normally short. An experienced bankruptcy attorney should be able to prepare you for the questions you will face at the meeting.