



ERRORS COMMONLY MADE BY PEOPLE WHO FILE BANKRUPTCY WITHOUT A LAWYER

Bankruptcy can be a trap for the unwary, particularly if you file bankruptcy pro se, i.e., without representation by a knowledgeable bankruptcy attorney. Some common mistakes made by individuals in filing for bankruptcy are listed below. All of these serious and sometimes catastrophic errors can be avoided by retaining competent bankruptcy counsel and following his or her advice.

Norwell Office

167 Washington Street
Norwell, MA 02632
781.660.8665

Cape Cod Office

1550 Falmouth Road, Ste 10
Centerville, MA 02632
866.263.5972

I. PROBLEMATIC PRE-FILING ACTIONS

#1. TRANSFERRING PROPERTY FOR LESS THAN IT IS WORTH WITHIN TWO YEARS BEFORE FILING BANKRUPTCY

Some debtors try to hide assets by transferring them to others before filing bankruptcy. These transfers are fraudulent and will be set aside at the request of the bankruptcy trustee and can result in the denial of discharge.

The debtor is required to disclose all transfers of property that occurred within the two years before filing. Most trustees will ask about property transfers during the meeting of creditors. If the debtor has not disclosed a transfer, he or she can tell the truth or be in serious trouble for committing perjury. If the trustee decides that the property was not transferred for fair value and was only transferred to shield it from creditors, the trustee will charge the debtor with fraud and the debtor will have to pay the court for the item transferred and could lose the right to be discharged. If the debtor transferred the property for fair value, the court may want to see what the debtor used the funds for. The court will always respond better to people who are honest and open.

#2. MAKING LUXURY PURCHASES ON CREDIT WITHIN 90 DAYS BEFORE FILING BANKRUPTCY

Some debtors decide to make luxury purchases – as opposed to charging ordinary living expenses – by credit card shortly before filing bankruptcy. The debtor may think he or she will be able to discharge the debt and keep the luxury item. One common example is a debtor who charges vacation expenses. This is a mistake. The creditor will review the charges and object to the discharge of any luxury purchases.

Purchases of luxury items using a credit card or cash advance are presumed fraudulent if done less than ninety days prior to filing. That period of time is referred to as the presumption of abuse period. If the court finds that these charges were indeed fraudulent, the debtor will be required to pay back the debts incurred in that period and will probably owe the creditor for court costs and attorney fees as well. If the debtor does not have the exemptions to protect the newly purchased property, it could be lost as well.

#3. PAYING OFF LOANS TO FAMILY AND FRIENDS IN THE YEAR BEFORE FILING BANKRUPTCY

People sometimes repay friends and relatives for monies lent to them even though they have not repaid their other creditors. Repaying a friend or family member who loaned you money may seem like the responsible thing to do. However, if a bankruptcy is filed less than one year after such a payment, the transfer could be treated as a preference and the bankruptcy trustee can sue the friend or relative to get the money back. Bankruptcy law requires that all your creditors be treated fairly relative to each other. When you pay back “insiders,” you are giving them preferential treatment.

#4. GETTING MARRIED RIGHT BEFORE FILING BANKRUPTCY

A person who gets married before filing for bankruptcy could find himself or herself disqualified from Chapter 7. A single person has only one income to consider when taking the Means Test. A married person has to add his or her spouse's income even if the spouse is not also filing. In many situations, that second income causes the debtor to fail the Means Test and forces him or her into a more expensive Chapter 13.

II. FILING UNNECESSARILY; FILING AT THE WRONG TIME; FILING THE WRONG CHAPTER

#5. FILING BANKRUPTCY WHEN THERE ARE BETTER ALTERNATIVES

Some people who file bankruptcy are unaware there may be less drastic and costly alternatives. Alternatives can include renegotiation of debts (which also is known as a workout) with creditors and the short sale of underwater real estate properties.

#6. FILING BANKRUPTCY WITH MOSTLY NON-DISCHARGEABLE DEBTS

If the majority of a person's debts are non-dischargeable, bankruptcy will do nothing to help. The debts will still be owed after bankruptcy, the debtor's credit will be hurt, and his or her time wasted. Non-dischargeable debts include income tax debts less than 3 years old, child support, alimony, debts for willful or malicious injuries, court-imposed fines and restitution, student loans, government benefits overpayments, judgments for personal injuries caused by driving while intoxicated, and 401(k) loans.

#7 FILING BANKRUPTCY WHEN YOU HAVE OR EXPECT AN INFLUX OF CASH

Timing in a bankruptcy is everything and can have wide-ranging implications. For example, inheritances, and money recovered from personal injury and other lawsuits can be taken by the bankruptcy estate, even after the case has been closed. Any money received from life insurance proceeds, inheritances, lawsuit recoveries and like issues is considered to be property of the bankruptcy estate from the time of filing until 180 days after the closing of the case. In addition, a portion or all of the debtor's tax refund can be taken by the bankruptcy court as well. This is something that an attorney can discuss with you to see what your options are as to protecting your refund.

Finally, if a debtor files bankruptcy while having cash that exceeds the allowed exemption for wages, he or she will be required to pay these funds over to the trustee. This could arise if the debtor filed bankruptcy after receiving a paycheck but held on to the cash and did not quickly pay the bills that the paycheck will be used to meet.

#8. FILING TOO SOON TO HAVE FEDERAL INCOME TAXES DISCHARGED

Unpaid federal income tax debts more than three years old can be discharged in bankruptcy but there are stringent requirements which must be met. If the case is filed case prematurely, i.e., too soon after the tax return is filed as one example, the debt will not be discharged.

#9. WAITING TOO LONG TO FILE BANKRUPTCY

One of the biggest mistakes made by debtors is waiting too long to file bankruptcy. Some debtors know they can qualify for Chapter 7, but delay filing. Unfortunately, when they finally decide to file, they discover that their situation has changed and Chapter 7 is not longer a good option. For instance, their income might be too high or they may have an asset that can't be protected that didn't exist at the time of filing. Bankruptcy is a snapshot of a moment in time and just because you have a good case today does not mean it will be a good one tomorrow. Many debtors are better off filing for bankruptcy earlier than later. Filing sooner may allow them to preserve more assets and repair their credit more easily.

#10. FILING THE WRONG TYPE OF BANKRUPTCY

Two types of bankruptcy are available to individuals: Chapter 7 liquidation and Chapter 13 wage earner reorganization. (Chapter 11 is also available, but is rarely a feasible choice due to complexity and high cost).

Choosing the wrong chapter can be catastrophic. Debtors who choose the wrong chapter may find themselves wishing they hadn't filed bankruptcy at all. If bankruptcy is filed under for the wrong chapter, the debtor could lose valuable property, or end up not discharging certain debts.

The choice depends on the debtor's personal circumstances and the purpose of the bankruptcy. If a debtor has low or no income and is without assets, a Chapter 7 bankruptcy is the logical choice. If the debtor is behind on a mortgage and hopes to keep the home, however, a Chapter 13 wage earner reorganization is probably a better choice.

Sometimes a debtor chooses Chapter 7 over Chapter 13 strictly based on superficial reasons, such as cost or length of bankruptcy. But the debtor may have had assets that could not be saved in Chapter 7. If the debtor had filed Chapter 13, the assets would not have been lost.

Some debtors blindly choose Chapter 13 because they assume they make too much money for Chapter 7 without putting themselves through the means test. That decision could cost them thousands of dollars more in the long run. Unless debtors seek legal counsel to help them analyze their case and the inner workings of each chapter, they may deeply regret their decision.

III. ERRORS AND OMISSIONS (INTENTIONAL OR ACCIDENTAL) ON BANKRUPTCY PAPERWORK

#11. OMITTING ASSETS FROM THE BANKRUPTCY PETITION, SCHEDULES, AND OTHER DOCUMENTS

Bankruptcy debtors must list each asset they own in their bankruptcy papers. If a debtor fails to list an asset, there is a good chance the trustee will find out. If the asset was omitted by accident, it will be subject to the same rules and exemptions as everything else. However, if it is determined that the asset was purposely concealed from the court, the asset will probably be seized and the case could be dismissed or closed without a discharge.

#12. FAILING TO LIST ALL CREDITORS AND ALL DEBTS IN BANKRUPTCY PAPERS

If a debt is not listed on the bankruptcy petition, there is a chance that the debt will not be considered discharged and the creditor will still be able to collect it as if the bankruptcy never existed. While that is not always the case, it is always the safest bet to ensure all creditors are listed so they can be notified of the bankruptcy.

#13. OMITTING MOTOR VEHICLES OR VEHICLE LOANS

Debtors sometimes fail to list their motor vehicles or auto loans in their bankruptcy filings. A motor vehicle is personal property and must be listed. An auto loan is a secured loan on personal property that also must be listed. If a car is owned free and clear, it still must be listed as an asset. A leased car is not owned by the debtor and is not listed. The lease, the lease payments and terms and the lessor, however, must be disclosed. The failure to list a motor vehicle as an asset can be construed as fraudulent and result in the dismissal of the case or even the loss of the vehicle. The transfer of a motor vehicle to another person before the bankruptcy could be construed as a fraudulent transfer unless the vehicle was sold in a commercially reasonable sale, i.e., fair market value was paid for it.

#14. UNDERVALUING ASSETS

Bankruptcy debtors are required to provide accurate, truthful and proper replacement value for all property owned in the bankruptcy papers. If that does not occur, the case is in jeopardy and the debtor could face allegations of fraud. The trustee appointed to represent the interests of the creditors will investigate the proper value of all assets listed.

#15. CLASSIFYING ASSETS OR DEBTS INCORRECTLY

In filling out the bankruptcy schedules, debtors must classify their assets, liabilities and creditors. Assets must be described as either real property or personal property (property other than real property). Debts and creditors must be described as secured, i.e., a mortgage or other lien, unsecured (creditors who have no mortgage or other lien) or

priority (unsecured debts for taxes and other government debts). A debtor's failure to properly classify an asset or liability or to list a creditor may result in the denial of a discharge for a particular debt.

#16. FAILING TO CLAIM PROPERTY EXEMPTIONS OR CHOOSING INCORRECT PROPERTY EXEMPTIONS

Property exemptions allow a debtor in bankruptcy to keep certain property that otherwise would be taken and sold to pay the creditors in Chapter 7 bankruptcy. In Chapter 13 bankruptcy, exemptions play a role in determining how much the debtor has to pay creditors.

Debtors sometimes err by failing to assert an exemption in a timely manner. A late filed exemption can be deemed waived. Also, after the filing of the bankruptcy case, the bankruptcy trustee can object to exemptions on grounds that they are not applicable. The debtor will need to respond to the trustee's objection by either refuting it or seeking to amend and correct the exemption election.

Exemptions exist to protect the assets of the debtor. If debtors don't understand how exemptions work or which exemptions they qualify for, they can lose their assets. It is always a good idea to consult an attorney and see which exemptions you are able to use and how they can work in your favor. Failure to use the exemptions properly can have disastrous consequences.

#17. FAILING TO LIST ALL POTENTIAL OR ACTUAL LEGAL CLAIMS AGAINST OTHERS

Debtors often fail to list in their bankruptcy papers lawsuits that they have brought against others or potential lawsuits. The trustee will ask all debtors whether they have any lawsuits or potential lawsuits at the creditor meeting. If you lie at the meeting, you can face fraud charges and your bankruptcy case will be closed or dismissed without discharge.

The lawsuit is considered an asset and is property of the bankruptcy estate. After the filing, the debtor may be able to continue with the lawsuit, provided that the bankruptcy trustee gives his or her approval. Sometimes, if the claim is viewed as viable and easily reduced to a collectible judgment, the trustee may seek to have counsel appointed to continue the lawsuit for the benefit of the bankruptcy creditors.

#18. FAILING TO DISCLOSE ALL SOURCES OF INCOME

A bankruptcy debtor must list all sources of income in addition to all expenses. This includes even the most inconsequential of part-time jobs. A debtor's failure to disclose his or her income can result in the dismissal of the bankruptcy case.

In both Chapters 7 and 13, income is a very important part of the equation. Failure to list all income in an attempt to avoid failing the means test will invite the United States Trustee's Office into the mix, as it is their job to determine if a debtor should be in a Chapter 7 or 13. When omitted income is discovered, the debtor will be under intense scrutiny from the U.S. Trustee's office and that can be a very stressful situation.

In Chapter 13, omitting income leaves a muddy picture of your true finances and whether you can afford to pay more money out to creditors every month. As debtors are required to provide paystubs and bank statements to the court, it does not make sense to omit income and face charges of fraud from the court.

#19. LYING TO THE TRUSTEE, COURT, OR YOUR ATTORNEY

Bankruptcy debtors sometimes lie with drastic consequences even though bankruptcy cases must be filed under oath. A bankruptcy case will be dismissed if the bankruptcy judge determines that the debtor lied in his or her bankruptcy filing. This could result in dismissal of the bankruptcy case and the debtor being denied the right to file for bankruptcy ever again as to the debts at issue.

Your attorney's role is to assist you and make sure your case is in the best position it can be before it is filed. If a debtor lies to his attorney, or doesn't give her the full picture, the debtor's case is in danger and the attorney will not be able to save it. The court will find out most of the time if income is under reported or assets are omitted. If the attorney wasn't informed of these issues, the debtor's discharge could be withheld. In addition, the debtor could face federal criminal charges for committing fraud in a federal case.

#20. FILING A CHAPTER 13 REPAYMENT PLAN THAT THE COURT WILL NOT CONFIRM

If you file a Chapter 13 repayment plan that is not feasible or fails to meet the legal requirements, you can end up with your case getting dismissed. The repayment plan is the most important part of your case and sets the guidelines for how the case will operate over the next three to five years. Your repayment plan must meet numerous conditions. For example, it has to repay all your priority debts, and pay your unsecured creditors as much as they would have received had you filed Chapter 7 bankruptcy. Developing a confirmable plan is difficult to do without help from a bankruptcy attorney.

IV. NOT FOLLOWING PROPER BANKRUPTCY PROCEDURES

#21. FAILING TO COMPLY WITH CREDIT COUNSELING AND FINANCIAL MANAGEMENT REQUIREMENTS

In both Chapter 7 and Chapter 13 bankruptcies, the debtor must take a credit counseling class from an approved provider (in most cases before filing the case). After filing, the debtor must take a financial management course as a condition to obtaining a discharge. Often, pro se debtors become confused about the counseling requirements, and fail to file the proper certificates proving they have completed the courses.

If you don't complete the first class, the court will give you a few days after filing to correct the situation. However, your case will be dismissed if you do not complete it on or before that date. If you fail to complete your second course, the court can withhold your discharge until you fix the situation. If you fail to rectify it, you will have filed bankruptcy for nothing.

#22. FAILING TO SEND THE TRUSTEE DOCUMENTS HE OR SHE REQUESTS

If you fail to send the trustee documents he or she has asked for, the trustee will postpone your meeting or continue it after you show up, meaning you will have to return to the courthouse again for another meeting. If you still do not provide the necessary documentation, your case will be dismissed.

#23. NOT ATTENDING THE MEETING OF CREDITORS

Failure to attend the meeting of creditors could result in the dismissal of your case. While the trustee may be nice and allow you one continuance, the trustee will definitely dismiss it if you miss the second meeting.