

Considering bankruptcy? A few thoughts

Many people are financially hard hit. Bankruptcy is an option that many are considering. What considerations should be made before you decide to file bankruptcy?

First, consult a reputable bankruptcy attorney. They will be able to help you navigate the legal issues in a bankruptcy. Exemptions from bankruptcy differ from state to state. They can also help you avoid various transactions that would make your filing much more difficult. Consultation with an attorney about a bankruptcy does have a cost. They will strongly advise that you destroy ALL credit cards, since use of credit after discussing potential bankruptcy with an attorney is fraudulent.

Second, before you file, you must go for formal credit counseling from an approved credit counseling agency. This counseling must occur within 180 days prior to filing a bankruptcy petition.

Third, if you are having financial difficulties, be careful about taking money from your retirement accounts (pension, 401(k), IRA, or ROTH IRA). Your IRA is excludable up to amounts reasonably necessary for retirement. All pension and 401(k) amounts are excludable. Loans from pension plans are not dischargeable in bankruptcy (so don't borrow). Distributions from these accounts are taxable and usually carry an additional 10% income tax penalty. Neither the tax nor the penalty would be dischargeable in bankruptcy.

Fourth, know your income. If your income is above the median income in your state, you usually must file chapter 13 bankruptcy (a wage earner plan). This chapter does not allow a fresh start but requires a three to five year payment plan to settle as much of your debt as possible. If your debt is more business debt than personal debt (including home mortgage), you are exempt from the wage earner plan filing requirement.

Fifth, know that many debts are NOT dischargeable in bankruptcy. Tax liabilities from late or fraudulent returns are not dischargeable. Tax liabilities that are three years old or less from timely filed returns are not dischargeable. Fraud or intentional torts, drunken driving torts, school loans, and marital support (alimony and child support) can not be discharged. If your debts include any of these obligations, bankruptcy will not discharge these debts.

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