

48 DOs & DON'Ts YOU NEED TO KNOW WHEN CONSIDERING BANKRUPTCY

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Seeing a bankruptcy attorney to learn your rights and options does not mean that you should or will file a bankruptcy case. Whether or not a Chapter 7 Bankruptcy, a Chapter 13 Reorganization or some other non-Bankruptcy option is the best choice for you, the sooner you get quality legal advice from an attorney as to what your options are, the better off you will be. There is no substitute for knowledge. Good choices only happen when you know all you options.

RETIREMENTS

1. **DON'T BORROW** against your retirement or IRA or 401(k). These are meant for your future. Borrowing against it now only adds one more payment you can't make. Don't steal from your future to pay for your present.

2. **DON'T CASH OUT** retirements, IRAs or 401(k) funds. Retirement funds are one of the most protected assets you have. They are difficult for creditors to reach, even if they have a judgment against you, and they are designed to help you maintain your lifestyle when the time comes to retire. Most of the time, this money is completely protected in bankruptcy. If you take money that was put away pre-tax, you will pay significant tax penalties and income taxes. Furthermore, once you remove the funds they are not protected in bankruptcy.

BANKS & CHECKING

3. **DON'T** take out any "payday loans" against a post-dated check or an automatic draw against your checking account. These loans have horrid interest

Page 1 of 13

rates and will almost always make your situation much worse than almost any other type of borrowing. If they advance you money, your payment to them will deplete your already limited funds. If you cannot cover the loan, the lender may allege fraud, which could cause some or all of your debts to be non-dischargeable in bankruptcy. In addition, when they present this for collection you will have a “bounced check.” This will keep you from getting a checking account from any bank or credit union for many years, if ever.

4. **DON'T write bad checks.** Writing a bad check is a crime. Obviously, being put in jail for theft is worse than the fact that such debts are not going to be wiped out if the creditor challenges the debt in bankruptcy. Neither is a good thing to have happen to you.

5. **DO get a new checking account with a bank or credit union if you owe any money for any reason (including credit cards, personal loans, vehicle loans and mortgages for example) to the bank or credit union you presently have your checking with.** They can seize the money in your account and pay themselves if you get too far behind on payments. This is called the “right of setoff.” They will certainly do so when you file bankruptcy. If that happens, you could end up with your other checks bouncing. No bank or credit union will ever give you a new checking account where there are bounced checks. Also, once there is a bankruptcy filing, it will be 3-4 years before you can get a checking account again even where you have no bounced checks. You need to get the new account as soon as possible. Do not forget that it takes as much as 2 months to get automatic deposits of paychecks, retirements, unemployment, disability and social security payments moved to a new account. If you have automatic deductions that you need to stop, the safest thing to do is withdraw the funds as soon as they clear your bank. They cannot take what is not there. There are some banks and credit unions that will still close your checking account when you file bankruptcy even if you don't owe them any money. This list has been slowly growing over the last few years and more are likely to do that in the future. A knowledgeable bankruptcy lawyer can tell you which ones are doing this so you can avoid doing business with them.

TAXES

6. **DON'T start an Offer in Compromise with the taxing authorities to settle back taxes.** Sometimes income taxes and even payroll tax employer-matching taxes like FICA can be wiped out in bankruptcy if it is more than 3 years since the tax return was due (from the end of any extension of time to file) and 2 years since filing

the return and at least 240 days after any “final assessment.” If you start an Offer in Compromise before these times run, it will stop that clock. Even worse, it will add an additional 6 months to those time requirements after the offer is rejected to be able to wipe your taxes out. Tax laws can be very complicated, but you should talk to a bankruptcy attorney before taking any action that might affect your ability to wipe out your tax debt.

7. **DO prepare and file your tax returns.** If you file the return and you cannot pay the taxes you will have some interest and penalties owed. If you do not file a timely return, in addition to the interest and penalties, the IRS will add 5% per month non-filing penalty for the first 5 months. Simply put, you can increase your tax debt by 25% just because you did not file your return. If you owe taxes, the attorney will want to know because the taxes may be able to be paid off through a Chapter 7 bankruptcy if there are assets for creditors, or through Chapter 13 reorganization plan. You also want to be able to determine if you are due a refund because the attorney will need to see if it can be protected. If it cannot, the attorney may hold off on filing until you get your refund and have converted it into value in things that can be protected.

CREDIT CARDS

8. **DON'T pay the credit card payments.** They are the least important creditors. Often people in your situation pay whoever hollers the loudest rather than whichever creditor is most important. Remember, many collection calls are made by people who are working on commission, and will say anything to get you to authorize payment. That includes lying to you. Too often, people simply pay money they cannot spare just to get a collector to stop calling. Making a payment won't stop the calls. In fact just the opposite happens. If they get \$10 for abusing you today, they figure that if they increase the abuse, they will get even more out of you. You may take the money you need to file a bankruptcy and then not be able to do so because you no longer can afford to do your bankruptcy. In addition, if your debt is old, it may be close to the “Statute of Limitations” (the time they can sue you on the debt) running. If you pay them money, that time starts over again. Remember, once you file for bankruptcy protection, the creditors harassing phone calls will stop for good.

9. **DON'T try to “save” a credit card by paying it off.** The vast majority of people who do this still lose the credit card even though nothing is owed on it. This is especially true where the credit card is with a bank or credit union where you owe them another debt. Another situation is where you have several accounts with the

entity like American Express. Paying off one card will never help you. You will lose the card and the money. Even if you only have the credit card debt and you pay it off, you still will lose the money. This happens if you pay more than \$600 total to an unsecured creditor in the 90 days prior to filing. The reason is that the bankruptcy Trustee will demand the money back from the creditor. Don't throw your money away doing something that is not likely to work. You need to discuss this with the attorney before you do it.

10. DON'T transfer credit card balances from one card to another. If you cannot pay the new card, they are more likely to file a fraud action in bankruptcy to get the debt denied discharge where the debt to the other cards are much more likely to be able to be wiped out. If you make a balance transfer, the new card company could argue that you "borrowed" money from them without any intention of repaying it. This is the case even if they didn't give you a dime; instead, they gave money to another credit card company to pay down your balance. Don't turn debt that can be wiped out into debt that can't be wiped out by making a balance transfer.

11. DON'T use your credit cards for any reason. This includes cash advances or convenience checks. Absolutely do not "max out" your credit cards. When you use them and you know that you do not have the ability to pay the payments, the bank can claim that you used the card with the intent to defraud them out of their money. You do not want to give them that ammunition. The debt could be not wiped out and, worse, you could be denied the ability to wipe out all your other debts.

YOUR HOME

12. DON'T take out a 2nd mortgage even if you can. If you have equity in your home, you may be able to protect \$75,000 to as much as \$175,000 in equity. If you take it out by borrowing against your home you lose that protection and put a burden on yourself and the ones you love for as much as 30 years. Worse yet, it may cost you your home. Bankruptcy law is designed to help people keep their homes, and the laws provide generous exemptions and protections for homeowners. Do not jeopardize your family home to get short-term financial relief.

13. DON'T pay your 2nd mortgage if the debt owed to the 1st mortgage exceeds the value of the home. If there is no equity for the 2nd mortgage to reach by foreclosing, they will not foreclose no matter what they say. They won't buy your home at foreclosure with a 1st mortgage debt that exceeds its value. That money you

keep can better be used to pay for living expenses for you and those that depend on you.

14. DON'T do a short sale of your home. Despite what you may be told by real estate sales people, it does not "save your credit" and is almost never a good decision. In most cases, the "forgiven" part of the debt you owed on the mortgage is treated by the IRS and the Franchise Tax Board (State) as taxable income! Remember, your real estate agent makes a fat commission by persuading you to do a short sale, even if it is not in your best interest. You do not want to get even worse off so someone can make a buck off you. Do not trust tax advice from someone who is not a tax expert. Doing a short sale only deprives you of time you could be living in the home rent free, and may cost you the ability to save your home. On top of that, even after a foreclosure, you can gain several weeks more free time in the home and even get paid money to move. After a short sale that you get nothing out of, you have to move out and pay rent. If you are reading this, it is highly doubtful that you have money to waste helping the banks, mortgage brokers, real estate sales people and house buyers. If you are in contract already, all is not lost as you can get out of the contract with a bankruptcy filing.

15. DON'T pay any company to try to do a loan modification. While you are unemployed, the lender is not going to agree to any modification. In addition, ALL loan modification companies including attorneys taking money up front from you to do anything relating to loan modification is a CRIMINAL. They cannot take money up front for those services (which are useless to you until you are employed). Every individual or business that takes money up front is a fraud. When you give a crook money, the chance they are going to actually help you is zip. Use common sense. If or when you get your income back up and you can make mortgage payments, you can go to several NON-PROFIT groups who will do this service for free.

16. DON'T make any payment on your home if you can't make the 1st mortgage payment as it comes due. This includes property taxes, homeowner's dues as well as sewer and garbage bills. Stay in the home as long as possible. It normally takes 6-12 months or more to go from being current on your payments to a foreclosure sale and final eviction. You will gain several more months of time in the home if you file bankruptcy before a foreclosure sale. Do NOT move out. You can lose control of the home yet still be liable for the homeowner's dues after you file a bankruptcy. Every day you stay in that home is one more day you do not have to pay rent. Moving out is like throwing away money you don't have.

17. DO tell your attorney about any judgment or tax liens that you have so they can be dealt with. Judgment liens can be stripped off your home in most situations. Tax liens may in some situations be stripped as well.

18. DON'T wait until you are in foreclosure or worse yet after a foreclosure sale to talk to a bankruptcy attorney. After foreclosure you may not qualify to file bankruptcy due to the "means test" in the bankruptcy laws. This is a complicated form that determines if you qualify to file. Only a few of your real expenses are used in the calculation. Your mortgage payment is one of those expenses that are used. After foreclosure, this gets replaced with what the IRS says your family should be spending on rent. We all know how generous the IRS is. After foreclosure it is too late to save your home. There is nothing more frustrating than meeting with you when you could have saved their home, but you didn't realize you had that option until it was too late. Even worse is having you now fail the "means test" because you can no longer use the mortgage payment in that calculation. Not only have you lost your home, now you can't get rid of your debts in a Chapter 7 bankruptcy. To add insult to injury, that debt may well include your 2nd mortgage that you likely still owe even though the home is gone.

RELATIVES & RELATIONSHIPS

19. DON'T GET MARRIED without talking to your bankruptcy attorney first. You could go from qualifying to get rid of your debts to not qualifying based on your spouse's financial situation. If you get married, your spouse's income is community income or household income that gets counted with yours.

20. DON'T GET SEPARATED without talking to your bankruptcy attorney first. You may change your ability to get rid of your debts. In addition to the financial impact of separation, you may find that when you work out a financial plan that fixes your debt problem, you have more time to spend on your relationships.

21. DON'T GET DIVORCED without talking to your bankruptcy attorney first. If you get divorced you may end up with an order to pay debts from the marriage. If you later file for bankruptcy protection, the debts may get discharged but if they go after the ex spouse, he or she can go to the family law court and make you pay them the money for not paying the debts the family law court ordered. It is called "indemnification" and is an action for "contempt" of the family law court's order. If you are in the divorce process and you have debts you cannot pay, you need to see the bankruptcy attorney immediately. If the bankruptcy is filed before the family

court makes a determination requiring you to pay these bills, they cannot order you to pay them. Essentially whichever occurs first wins the day. Many divorce attorneys do not understand how debt is impacted by divorce, or the consequences of divorce on bankruptcy law.

22. DON'T GIVE UP on marriage or other relationships. In almost every divorce, there are financial problems. Often what looks like a mountain of a problem that cannot be solved becomes solvable when the financial strain is removed. Financial problems are the #1 cause of divorce, ahead of infidelity, alcohol, gambling and drug addictions combined. Get rid of the debts and save your relationships. A bankruptcy attorney's fee is a lot less than the cost of a divorce attorney.

23. DO tell your attorney about any situation where you have someone who may die in the near future and leave you an inheritance. If you want to get to keep that inheritance, tell the attorney immediately about the situation. It may make a huge difference in timing the filing of your case. If this person dies within 180 days after the case is filed the money goes to your creditors, not you. If there is a risk but it is likely to be more than 180 days you may need to file the case quickly, Other possibilities include having a will changed to not give the inheritance to you and have it put in a "spendthrift" trust that a trustee cannot get to .

24. DON'T put money in your children's accounts. It will be taken from them and may jeopardize the other money that is in the account. Discuss any accounts that you have with the attorney. They may or may not be a problem, but only your attorney can tell you if they are. Remember, there are almost always things you can do before filing to protect yourself and your assets, and discussing your situation with an attorney is the best thing you can do to protect your money, wherever it is located.

25. DON'T borrow from friends or relatives. Don't make your problem their problem. When you cannot pay them back when they need, want or are expecting the money it causes bad feelings. This never ends well and you may need their help much more in the future. Remember, your current financial problems may be stressful, but in the end they all just involve money. Don't let your relationships with your friends and family suffer because of your financial situation, especially when you have other options.

26. DON'T give any money, land, houses, vehicles, jewelry, bank accounts or other things of value to friends or relatives, even to pay a debt you owe them. That only reduces the amount you have to stay afloat. In addition, if you end up in bankruptcy, a Court-appointed Trustee will force them to give the money or assets

back and will sue in Bankruptcy Court to recover these from them. If they sold or spent whatever you gave them, they will now have to find money to pay the Trustee. Do not think the Bankruptcy Trustee will not find out. They will be looking at your bank records, tax returns, income information from 6 months to several years. They will also look at DMV records county recorders' records, and do a complete search for transferred assets or money. In almost all situations these things are going to be protected if they are in your name and personal possession but cannot be protected in someone else's name or control.

27. DO tell your attorney about any transfers of money or assets to friends and relatives in the last 2 years and any transfers of houses or real property in the last 10 years. The attorney can tell you if these are a problem. If they are, the attorney can explain what options you have to fix the situation. It is always a mistake to hide information from your attorney. In most cases, you can take steps to undo the harm and fix the problem. However, if you don't tell your attorney about this sort of transfer, and it is discovered during the bankruptcy, it can cause huge problems for you, and can even be a crime if it was not disclosed at the time your case was filed.

28. DON'T hide or fail to tell your attorney, the bankruptcy Trustee or the Court about any money you owe to friends and relatives. Many people don't think of their parents as creditors, even if they make the occasional loan to help with living expenses or other bills. However, in bankruptcy you are required to list everyone you owe money to, including your parents. Telling your attorney about the loan will not only prevent you from filing false information in court, it will guarantee that your parents will get the same protections as other creditors. In some cases, your creditors may be entitled to receive some or all of their money back. It is unfair to your friends or relatives if you do not tell your attorney about their loans, since it could cause them to miss out on a chance to get some of their money back.

29. DO tell your attorney about any accounts or property that have your name on it even if that is something a relative put you on for inheritance purposes or that you are on to help handle their expenses. These may or may not be ok. Either way, you need to know as soon as possible so any issues can be resolved before you have to file bankruptcy. You will always have more options if you disclose the accounts early, before your case is filed.

PAYING DEBTS

30. **DON'T** pay any debts except regular bills that you pay in full each month like electricity, natural gas, water, etc. that would be shut off if not paid. If you are behind on these do not pay them until you have discussed these debts with the bankruptcy attorney. The attorney will advise you as to why it will be good or bad to pay these debts because it could be either depending on your situation. You need to conserve as much of your money as possible when you are in financial crisis, and until you learn about your options, you should not make payments to creditors without speaking to your attorney.

31. **DON'T** pay off any vehicles for any reason. You can literally take a vehicle with a debt owned on it that you would be able to keep, and make it so there is too much equity to protect. Then the Bankruptcy Trustee would take it away from you and sell it to pay your creditors. Another reason is that the "means test" analysis to qualify you to be able to file bankruptcy gives you a huge "ownership expense" credit against you income (a good thing) if you owe money on your car but gives you no "ownership expense" credit at all if the vehicle is paid off. I know, it does not make sense. This system of bankruptcy laws is broken. You need to know the rules of the system to "win the game" and get your discharge.

32. **DON'T** tell creditors that you intend to pay them when you don't have the money to pay all your creditors or you are considering bankruptcy. It can be argued that they were defrauded because they relied on your "misrepresentations" and as a result did not act to protect themselves. You never want to give them ammunition for that type of argument as it can cause the debt to not be able to be wiped out in bankruptcy. The less said to creditors, the better.

33. **DON'T** negotiate a settlement to pay any part of a debt to any creditor. There are 3 problems with doing this. First you may need that money for more important things later (like food, clothing, utilities, vehicles and housing expenses). Second, any debt "forgiven" as part of the deal will be treated by the IRS and the FTB (State) as ordinary taxable income. That means you will have to pay income taxes for settling the debt for less than you owed. If you have to settle the debt because you have no money, where is the money going to come from to pay more income taxes? Third, if you do have to file bankruptcy anyway, settling a particular debt is a waste of time and money. Finally, depending on how long it was before the bankruptcy is filed, the Bankruptcy Trustee can get the money back from the creditor and you cannot protect that money. In your hands it may be protectable. If the Trustee gets the money back, both you and the creditor lose. Not the results that you want.

34. DON'T pay any company any money to settle your debts. They are almost always scams. If you decide later, after getting employed that you want to do this, there are several NON-PROFIT groups that will help you set up a payment plan for free. What many debt settlement companies don't tell you is that they take most of your initial payments for their own fees, and they are powerless to stop your creditors from suing you. Even if they manage to settle one or two of your debts, if even one creditor files a lawsuit, you may be forced to protect yourself through bankruptcy anyway. Why throw good money away to line the pockets of debt settlement companies when you need that money for you and your family?

35. DON'T make any more payments on things you do not need like luxury cars (unless it is the only car you have), motor homes, boats, jet skis, trailers, motorcycles (unless it is your only transportation,) time shares or a 2nd house. The money you save may be the money that you need to put food on the table later. Whatever it is, if you do not need it, quit throwing your money away on it. If your finances improve, you may be able to catch it up later. If they don't improve, at least you did not waste what precious little money you have on something you do not get to keep anyway.

LOOKING FOR MONEY

36. DON'T pawn anything. Pawning the things you care about for immediate cash usually ends up with you losing these things for a fraction of what they are worth. More importantly, you can never replace the personal memories and sentimental value of these items. Most items that people pawn can be protected in bankruptcy, but the cash you receive from pawn shop may not be able to be protected. Do not trade your memories for the small amount of money you can get from pawn brokers.

37. DON'T take what little you have and make your plan to get out of debt gambling. Same is true for the California Lottery. It never works despite the TV advertising. Someone is paying for those fancy casinos and ads. Don't make that "someone" you.

38. DON'T wait to apply for unemployment and any other available government programs that can help you by supplementing your income or reducing your expenses (like food stamps). Remember that these programs were set up to help you when you are in difficulty. Using these benefits that we pay taxes for rarely will affect your ability to file a bankruptcy and may be needed to be able to save a

home or keep a vehicle you owe money on. Not receiving the benefit of these programs because of embarrassment or pride when you have family members to support is unfair to them.

FINDING & GETTING THE MOST FROM YOUR ATTORNEY

39. **DON'T** hide anything from your attorney, the Bankruptcy Trustee or the Court. Lying to your attorney, Trustee or the Court makes for very bad results. You may think that means that you don't hide the things you own (assets) and what you owe (debts.) These have to be provided but it also includes every piece of information requested. Your bankruptcy attorney cannot help you if you do not tell them the whole truth. I have found that it is not what my clients tell me that gets them into trouble, it is what they don't tell me. Don't make this mistake. It can cost you the ability to wipe out debts, you can lose your assets, and you could end up in prison for lying to the Bankruptcy Court and the Trustee.

40. **DON'T** hire an attorney to do your bankruptcy if that attorney is also practicing other fields of law. This is a complicated and highly technical field of law and is not suitable for the part-timer. You would not go to your family doctor to do heart surgery. You need the specialist to get the best result. Watch out for attorneys who are new to the field. More than ½ of the attorneys filing bankruptcy cases now were either in law school or were doing something else a couple of years ago. When the other fields of law declined they said to themselves, "what can I do to make a living? Oh, I can fill out papers and call myself a bankruptcy attorney." This is definitely not about filling out papers. It is about knowing the law and the latest court decisions interpreting the law. Experience counts.

41. **DO** tell your attorney about any business, partnership or corporation you own or have any interest in. This includes even a small business, even if it is losing money. Tell your attorney about the total monthly income of the business before any expenses are deducted. Whether you qualify to file a Chapter 7 bankruptcy can very well depend on that information. How you hold title to the business, the type of business, and many other issues can make a huge difference as well, especially if you want to keep the business open.

42. **DON'T** file bankruptcy until the bankruptcy attorney has had the chance to look at everything you own or have rights in. You get one shot at protecting assets. Once you file, it is too late because what you own on the day you file is what is counted and what can or cannot be protected. There are many things that are

“assets” that can be taken that are often not considered by people. A few examples of this that people often don’t think about include: earned but unpaid wages, commissions, tax refunds (including next year’s refunds based on this tax year), inheritances, businesses, stocks, multi-level marketing cash flows, trusts, checking, savings and brokerage accounts, your right to repayment of loans you made to others and the right to sue anyone for any reason, just to name a few. Many of these may be able to be protected or can be sold and the funds used to buy things that can be protected. There are no second chances to get it right the first time.

43. DON’T make any major financial decisions without talking to your attorney first. As crazy as it sounds, taking a job at the wrong time can cost you tens of thousands of dollars and 5 years of your life. On the other hand, a new job may be just what you need to help you keep your home, cars and other things you owe money on. Your attorney can tell you what you need to get the result you want.

44. DON’T lie or in any way misrepresent the facts to your attorney. If you are not sure if something applies, ask your bankruptcy attorney so they can tell you what needs to be done, if anything. It is always better to give too much information than to not give enough information. If you are hiring the attorney to protect you, you need to help that attorney by providing complete and honest information so they can do the job right. Always cooperate with your attorney and make sure the attorney can get hold of you.

45. DON’T ASSUME YOU KNOW WHAT YOU SHOULD DO. YOU DON’T. Talk to a competent bankruptcy attorney who can give you the advice you need. Doing brain surgery or legal services on yourself seldom turns out well.

IMPORTANT THINGS THAT DON’T FIT ANYWHERE ELSE

46. DON’T ignore law suits or non-bankruptcy court hearings, especially an Order of Examination. Sticking your head in the sand only means that you will not see the lion until it kills you. Ignorance may be bliss, but that bliss ends in painful reality. Do not ignore problems. Find out how to solve them.

47. DON’T buy a home or vehicle right before you plan to file bankruptcy. This can be considered fraud in some situations. There are situations where this is a good thing to do but only a skilled bankruptcy attorney can advise you if this is right for your situation.

THE BOTTOM LINE

48. Do Call Fraley & Fraley Sacramento Bankruptcy Attorneys at (916) 485-5444 or 1(800) 675-1005 *Immediately* to Schedule Your Free, No Pressure, Bankruptcy Attorney Consultation. Don't Wait. The Earlier You See Us, The Better Your Result Will Be.

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