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Bankruptcy timeline: Pre-bankruptcy

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You might have spotted some signs that you're headed toward a deep financial hole. You've been skipping payments on your mortgage or car loan or maybe you've been maxing out your credit cards. Repeated calls from creditors demanding their money might tell you something, too.

A low credit score would seem to be a strong hint, but it's not always a good gauge. Barry Paperno, manager of consumer operations at Fair Isaac Corp., a leading developer of credit scores, says consumers who file bankruptcy can have very different credit histories with a wide range of FICO risk scores at the time they file. And they can be affected in very different ways.

"The degree of the effect on each consumer will vary depending on other factors evaluated by the FICO score, such as the length of credit history, amount of credit obligations paid as agreed, other delinquency/derogatory items, amount of credit used, types of credit used and search for new credit," he says.

Attorneys say that if you do have to file bankruptcy, preparation and timing are extremely important, especially with the new provisions in the law such as the Chapter 7 bankruptcy "means test," which determines a consumer's disposable income.

"You need to average the income over the prior six months," says Marc Stern, co-chair of the Bankruptcy Committee of General Practice solo division of the American Bar Association. "If the debtor lost a high-paying job, the longer between the job loss and filing the better. The wait probably presents a more factually correct analysis of the debtor's situation.

"There are other factors: If a medical problem has not been stabilized, there is no reason to file, or, if anything, file a 13. It can be dismissed or converted at a later time. If the debtor is not employed, why file? There is usually nothing for a creditor to pursue. Wait and file shortly after they get a job."

But don't wait too long to seek help, especially if you are faced with a legal action such as a mortgage foreclosure, car repossession, wage attachment or an inevitable loss of property.

Also, be extremely mindful of your spending. Monitor your use of credit cards. The American Bankruptcy Institute advises that once you've decided to file bankruptcy, stop using the cards.

Experts warn that anything you purchase knowing you won't pay is considered fraud under the bankruptcy law and that debt won't be discharged. Buying luxury items such as a high-definition television or services like a day at the spa and/or taking out cash advances within two or three months before you file won't be discharged, even if, at that time, you didn't think you would file.

So, the decision is made. You believe filing a Chapter 7 liquidation or a Chapter 13 repayment plan bankruptcy is the best move to eliminate your mounting debts and end constant calls from creditors. What's next?

Gather financial documents

The new law has added a series of provisions to tighten loopholes by requiring more paperwork. A case can be dismissed for failure to provide all required documents and information. So an organized pile of essential documents not only smoothes out a very detailed process but also saves time and most importantly, money. Prepare a list of assets, debts, income and lawsuits, and put together all financial documents such as pay stubs, receipts and tax returns relevant to the list.

Bankruptcy costs

The bankruptcy process can be expensive. Costs include the attorney's fee, the bankruptcy filing fee and now credit counseling fee. The charges vary from state to state. Brad Botes, consumer bankruptcy attorney in Birmingham, Ala., and former executive director of the National Association of Consumer Bankruptcy Attorneys, says that, based on his communications with practitioners around the country, the costs for a Chapter 7 bankruptcy

filing can be as low as \$600 to \$700 and as high as \$3,500 for your attorney's fees.

Some attorneys and scholars suggest preparing to pay \$1,200 to \$2,500 for a Chapter 7 bankruptcy. Botes says costs for Chapter 13 bankruptcies are set by the local bankruptcy court, and these costs have ranged as low as \$1,500 and as high as \$3,500.

The court-filing fee for a Chapter 7 bankruptcy filing is \$299. A Chapter 13 is \$274.

The Department of Justice's Executive Office of the U.S. Trustees, which enforces bankruptcy laws, has not announced what it considers a reasonable fee for bankruptcy counseling, but you should expect to pay as much as \$50 each for both the pre-filing and pre-discharge counseling services.

However, credit counseling must be provided regardless of the debtor's ability to pay. Jane Limprecht, spokeswoman for the U.S. Trustees Program, says a number of factors might affect the debt management course fee, such as length and depth of education, because the courses range from "basic to more comprehensive."

Also, know that additional fees can arise when you file. The fees can creep up when changes are made or additional litigation occurs.

Pre-filing credit counseling

The new law requires debtors to participate in pre-filing credit counseling within the six months prior to filing bankruptcy. A debtor can contact a government-approved credit counseling agency in his or her district. The list of credit counseling agencies can be obtained from places such as the federal bankruptcy court and the U.S. Trustees office.

Credit counselors are required to examine the debtor's financial situation, find out how the debtor got in his or her financial mess, and figure out ways to handle the debt in the 90-minute session. The session is taught face to face, over the phone or via the Internet. The debtor is provided a certificate upon completion of the program. This certificate must be included in the paperwork that will be filed with the court.

A bankruptcy attorney may provide a list of nonprofit credit counseling agencies and direct you to an agency, but some in the credit counseling industry suggest talking to a bankruptcy credit counselor before visiting the attorney.

"There are far too many (debtors) that go to a bankruptcy attorney first. Obviously, the attorney will want them to file," says David Jones, president of the Association of Independent Consumer Credit Counseling Agencies.

Jones says debtors should go to a credit counselor independent of the lawyer because the counselor could recommend options other than bankruptcy. Once the counselor suggests bankruptcy, Jones advises heading to an attorney right away.

However, Botes says an individual, "should exhaust every option they have before declaring bankruptcy," and says that a good attorney is qualified to advise options, has experience with bankruptcy courts and will do his or her best to prevent the debtor from filing.

Find a good bankruptcy attorney

Many consumers are completely clueless about bankruptcy procedures and laws, so bankruptcy experts suggest consumers go to attorneys who are board-certified in consumer bankruptcy law. The experts also suggest talking with a couple of attorneys to determine who can provide the best representation. One way to select an attorney and learn more about the bankruptcy process is to visit a bankruptcy court and watch the attorneys in action. Also, some questions that can help you find a lawyer who will best fit your needs are:

Questions to ask

- How many bankruptcy cases do you file each month?
- How many cases have you had where the U.S. Trustees moved for dismissal for abuse?

Stern says that if the attorney files five to 10 cases each month, he or she probably has sufficient experience. If the attorney has never filed, "Run," he says.

He adds that when the attorney has cases where the U.S. Trustees moved for dismissal for abuse, the attorney probably didn't do a good job or is an attorney who takes very hard cases. If the latter is the case, he'll most likely charge more.

Stern also suggests asking whether the attorney has written an article in the area.

"You want to know that the attorney keeps up with the law and knows what is happening. One of my clients once told me that the most expensive thing she ever bought was a cheap attorney. Price should be on the list, but that comes only after determining competence."

If your situation is dire, you may be able to get help on a pro bono, or free, basis. Check with a legal aid bureau or bar association.

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