

Deciding whether to file for bankruptcy

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From the National Association of Consumer Bankruptcy Attorneys

www.nacba.com

Before a bankruptcy case can be filed, the debtor must decide whether bankruptcy is, in fact, the best vehicle for dealing with the problems that the debtor faces. In a typical consumer bankruptcy case, most of the attorney's analysis involves comparing bankruptcy with other possible avenues of handling financial problems.

A necessary prerequisite to such comparison is a knowledge of all the relevant facts. Although it may sometimes be possible to rule out bankruptcy based on knowledge of only a few facts (for example, that a debtor does not wish to lose certain property that cannot be saved in bankruptcy), it is never possible to decide safely to pursue bankruptcy without a thorough knowledge of the facts. Without such knowledge, unknown property (such as the right to a tax refund) may be lost in bankruptcy; major debts may turn out to be unaffected because they cannot be discharged or because there are liens on property; or property might be incorrectly valued and, as a result, lost to creditors.

To assess whether bankruptcy will help, take the following steps:

- **Learn the advantages and disadvantages of bankruptcy.** It is important to know the benefits and pitfalls of bankruptcy. While the benefits can be great--discharge of most debts and an automatic stay against creditors--there are disadvantages, particularly the possibility of losing property.
- **Determine whether bankruptcy will get rid of your debts.** Bankruptcy doesn't eliminate all debts. If you have many secured debts or debts that cannot be discharged in bankruptcy, bankruptcy may not be the best option for you. Debts that cannot be discharged include taxes, alimony and child support and student loans.
- **Do a budget analysis.** Doing a budget analysis can help you determine whether you will be able to pay your bills after a bankruptcy proceeding. You need to calculate ongoing expenses and income to determine whether a bankruptcy proceeding will solve your debt problem or if the problem will continue.
- **Consider the effect of bankruptcy on your spouse.** You might not be the only one affected when you file for bankruptcy; you also need to consider the impact bankruptcy will have on your spouse. While he or she will not be responsible for your individual debts, your spouse may have to pay for any joint debts--and joint property may be affected by the bankruptcy.
- **Consider alternatives to bankruptcy.** Bankruptcy is only one way to deal with overwhelming debt. There are other steps you can take to reduce your debt that don't involve filing for bankruptcy.

In deciding whether to file a bankruptcy case, several other factors must be considered. Is the debtor likely to fall further into debt? For some the answer is no; their debts arose before they

lost a job because of layoff, disability or retirement. For many, though, there is the prospect of medical bills or other continuing financial problems that will result in greater debt. There is also a slight possibility of a motor vehicle accident or other incident creating a large liability.

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Some debtors have only a few debts and have strong defenses against them. For those debtors, the best avenue might be either litigation or settlement outside of bankruptcy court. This decision may also depend on whether resources are available to make the alternative of vigorous litigation a possibility.

In all of these cases, a debtor should bear in mind that the same relief in bankruptcy will probably be available later but that filing a bankruptcy case now will impair the right to file another in years to come. Thus, unless a judgment-proof debtor expects to acquire nonexempt property soon, he or she may wish to wait.

Ultimately, the debtor must make a decision. Do the advantages of bankruptcy outweigh the disadvantages? Will bankruptcy have a positive effect on the debtor's life? For many consumers who face real threats that can be dealt with in bankruptcy, the answer is yes. But even those who are not in danger of sustaining a tangible loss may value the peace of mind that comes from having their burden of debt lifted. Whether debtors hope to someday make it out of a life of poverty or simply seek relief from the constant pressure to pay what is owed, these feelings should not be discounted.