

Filing for Bankruptcy On Your Own: Never a Good Idea!

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One of the first things you learn in law school is: “only a fool has himself for a client”. It is hard to imagine a situation that this truism applies more to than [filing bankruptcy](#). While individuals may represent themselves in bankruptcy court and file a bankruptcy case without an attorney or "pro-se," it is extremely difficult to do so successfully.

It is critical that a bankruptcy case be planned, prepared and filed correctly. The rules are very complex (the Code is over 500 pages long!), and I have seen first-hand many pro-se debtor's have unfortunately hurt their chances by filing on their own. If you think [filing bankruptcy](#) is as simple as filling out some forms, paying a fee and then making one appearance in court, you are putting your case in jeopardy.

When you file a bankruptcy case by yourself, you are held to the same standards as an attorney. “I didn't know” won't save your case and it won't save you from being charged with perjury. Many cases of pro-se filers are dismissed for all kinds of reasons, making what could have been a simple, successful filing, much more complex and possibly disastrous. Here are the detailed reasons you should not go it alone:

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Simple Mistakes



A pro-se debtor's case may be delayed or dismissed for failure to file a required document, such as a copy of their petition and supporting paperwork to the trustee prior to the 341 Hearing. Meeting deadlines is a crucial factor in a successful filing. Overwhelming pressure to meet deadlines can cause your petition and other forms to be incomplete or worse, inaccurate, further delaying the process, and triggering other more complex, court procedures.

Moreover, besides the general Federal rules that apply to every case, there are "local" rules and customs, that vary from trustee to trustee: Only an experienced [Bankruptcy attorney](#) can guide you properly.

If you make a mistake and your bankruptcy petition is dismissed, it will likely cost you several hundred dollars extra to reinstate it. Approximately 50% of pro-se filings get dismissed! There are also restrictions in place that prevent "serial filers." They might impede you from refileing. You could end up with a bankruptcy filing on your credit record and no relief.

"It Doesn't Really Belong to Me"

Sitting through many 341 Hearings, one of the most common and potentially damaging mistakes a pro-se debtor can make is not understanding what is considered "legal title" to assets. If your

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name is on a car title or on a bank account, it is considered your asset for bankruptcy purposes! It does not matter that it might be the car your daughter drives and pays for, or that the bank account is all your mother's money and you are a co-signer "just in case." These will be considered as part of your filing. This concept is critical, as I have personally seen pro-se debtors lose assets they otherwise might have kept, with some simple planning.

Bankruptcy has long-term financial and legal consequences - hiring a competent attorney is strongly recommended.

Means Test

Most debtors will need to prepare a "means test". This is a very complicated 6-page calculation, similar to preparing a tax return, which is a detailed assessment of your income and expenses. It is so complex that most attorneys use specialized software to ensure that it is done properly. Preparing this form is critical to a successful filing. Calculating the means incorrectly can have dire consequences: dismissal of case or transfer of a Chapter 7 (liquidation) case to a Chapter 13 (repayment plan) case.

Listing Debts & Assets

Contrary to popular belief, Debtors must list all assets and all debts in their bankruptcy schedules; you don't get to pick and choose or leave a credit card out for a rainy day. If a debt is not listed, it is possible the debt will not be discharged. The judge can also deny the discharge of all debts if a debtor does something dishonest in connection with the bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Did you know that transferring some of your property to a family member prior to filing may constitute fraud?

Moreover, individual bankruptcy cases are randomly audited to determine their accuracy, truthfulness, and completeness of the information that the debtor is required to provide. **Please be aware that bankruptcy fraud is a crime.**

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Exemptions



Under Bankruptcy Law, certain assets are “exempt” fully (i.e., retirement accounts) or as is more common, exempt up to a certain amount (i.e. Home, car, cash in the bank). In New York, it is not always a simple process to determine what is exempt, as there is now a choice between “New York” exemptions or “Federal” exemptions, depending on the nature and amount of assets of the debtor. There are now “wildcard” exemptions, which can be applied to almost any asset, it is critical to apply these correctly.

Without the assistance of a knowledgeable attorney, you may lose a valuable asset. For example, in New York, if you file [Chapter 7 bankruptcy](#), your car is protected as long as you have less than \$4000 equity in it. If you have more equity than that, you may lose your car. Do you own an RV, boat or second car? You may lose them in a bankruptcy, unless you have taken the proper steps to prevent it from happening. A knowledgeable attorney will know how to deal with these kinds of situations before you file.

Credit Counseling

Another change instituted in 2005, was the credit counseling requirement. A course must be completed both prior to filing and prior to discharge, and to file a statement of compliance and a certificate of credit counseling furnished by the provider. Failure to do so may result in dismissal of the case. This is routinely provided by an experienced Bankruptcy attorney (our office sends you links automatically), but not so easy to set up on your own.

Creditor Challenges

Although rare, creditors have the right to challenge your filing, meaning they may eventually be owed some money. You need a skilled, aggressive litigator who knows how to deal with them. In the instance that your case faces objection, the pro-se filer’s lack of expertise in responding to

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an Objection to Exemptions or to an Objection to Discharge can be devastating. Property loss or case dismissal can occur, both of which are generally avoided when an experienced attorney is handling your case.

Chapter 13 v. Chapter 7



Some people should not file Chapter 7 but should [file Chapter 13](#) instead. This is not always an obvious decision. There are many factors that come into play, i.e. income, expenses, assets, and unusual circumstances that are particular to each filing. Meeting with a qualified bankruptcy attorney will put you in the right direction to make sure you are filing under the right Chapter.

Petition Preparers

Perhaps you need to file Bankruptcy, but believe you cannot afford to hire an attorney. There are non-attorney petition preparers who solely type your information on bankruptcy forms. However, please be careful here. Although Petition preparers may charge less than an attorney, they are barred by law from providing legal advice. They cannot explain how to answer legal questions or assist in [bankruptcy court](#). So although you may save a few dollars in filing, it is very often that your case may be at risk by using these services.

In sum, bankruptcy laws are quite complex and are best approached with the legal expertise of a reputable bankruptcy attorney. Each case has its own nuances, so working with a bankruptcy attorney who knows how to represent your specific interests to achieve the most advantageous terms in your case is critical to a successful filing.

Save yourself from unnecessary risk and anguish. Don't try to [file bankruptcy](#) by yourself. We offer a [free, confidential consultation](#) and reasonable fees. Call us today!

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