

BANKRUPTCY LAW IN UTAH: PRE-FILING TIPS

TIP #1. Pay off a credit card with a small balance before filing, or apply for a new credit card.

Every creditor a consumer owes money to **MUST** be listed when a consumer files bankruptcy. The Bankruptcy Court will then notify the Creditor of the bankruptcy filing, and the Creditor will generally revoke charging privileges. If a consumer has a credit card with a balance of less than \$600.00, however, the consumer should consider paying off the balance before filing for bankruptcy. If there is no balance owing to the Creditor at the time of filing, it is not necessary to list such Creditor in the bankruptcy schedules, and the Creditor will not be notified of the bankruptcy. Thereafter, the consumer will retain charging privileges. Similarly, a consumer may wish to consider applying for a new credit card before filing bankruptcy, but refrain from making charges on the card until after the bankruptcy filing. Again, the new creditor will not be notified of the bankruptcy filing and charging privileges will be retained. Of course, it is possible that a Creditor could learn of the bankruptcy filing some time after the fact through a credit report or some other means, and terminate charging privileges at that time.

TIP #2. Do not withdraw or take out a loan against a 401K,IRA or other similar retirement account to pay off or consolidate debt. Under Utah law, an individual's interest as a participant or beneficiary to a retirement plan such as a 401(k), IRA, or other similar tax-deferred retirement plan is *exempt* from creditors in bankruptcy. Therefore, a consumer may file bankruptcy, eliminate or consolidate debt, and retain all funds in their 401(k), IRA or other similar retirement plans (except deposits made one year before filing). Early withdrawal results in tax liabilities and penalties which are not dischargeable in bankruptcy. A consumer should consider filing bankruptcy to resolve their financial problems and preserving this difficult-to-accumulate asset for retirement purposes only.

TIP #3. Do not borrow money against a home to pay off excessive debt or consolidate debt. The Homestead laws in the State of Utah were amended in 1999 and are presently very favorable to bankruptcy debtors. The present exemption for an individual's primary residence is \$30,000.00 per individual and \$60,000.00 per couple. Therefore, consumers should seriously consider resolving their financial difficulties through bankruptcy debt consolidation (Chapter 13) or bankruptcy debt elimination (Chapter 7). They could claim the equity in their home as exempt and emerge from bankruptcy with the equity in their home intact. Incurring additional long-term debt against a home often results in excessively high payments which may place consumers at risk of losing their homes at a later date.

TIP #4. Do not pay \$600.00 or more to preferred Creditors before filing bankruptcy. Debtors must disclose in their bankruptcy schedules, payments to any single Creditor aggregating more than \$600.00 within 90-days before filing bankruptcy. Debtors must also disclose payments of \$600.00 or more to "insiders" including relatives and business associates within one year before filing bankruptcy. Bankruptcy law prohibits preferring one creditor over another, and payments to regular creditors within 90-days of filing bankruptcy, and to relatives or business associates within one-year of filing bankruptcy, are considered preferential payments. The Bankruptcy Trustee can recover any preferential payments made and divide the proceeds equally among your other Creditors.

TIP #5. Do not put property you own into someone else's name to prevent it from being taken by creditors or the bankruptcy trustee. Transferring assets into some else's name prior to filing bankruptcy to protect the assets from being taken by the Bankruptcy Trustee is fraud on Creditors and can result in a Debtor's discharge being denied. In addition, the Bankruptcy Trustee can take back the assets from the person to whom they were transferred. Many assets owned by consumers are exempt which means they cannot be taken by a creditor or the Bankruptcy Trustee. Debtors owning non-exempt assets may retain all assets in a Chapter 13 bankruptcy case.