10 THINGS YOU NEVER DO BEFORE FILING BANKRUPTCY

by E. R. Mousa
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whose principal office is located in Jacksonville, Florida.

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When people come to see me to discuss a possible bankruptcy, they are usually full of stress and anxiety about their financial future. When we discuss what’s bothering them most about their debts and what options they need to consider, and paint a picture of their life after bankruptcy — free from uncontrollable debt — it is always a joy to see the stress melt away and be replaced with hope. Sometimes, clients do things that make their bankruptcy more difficult, expensive, and time consuming. Unfortunately, that prolongs the stress and recovery.

That is why I wrote this book. I wanted to help anyone considering bankruptcy to avoid doing certain things to complicate their bankruptcy, protect their property for themselves and their family, and provide a calm bankruptcy experience.

I have laid out the 10 worst things you can do before filing bankruptcy, along with real-life examples from the over 1,000 bankruptcies I have filed since 1985. These are not in any particular order, but each item can cause major problems in a bankruptcy case.

If you have to file bankruptcy right away and have taken any of these actions, there is usually a solution. However, you must get an experienced bankruptcy attorney to handle your case, and never do it yourself. My firm has often cleaned up a mess of a case that could have been much smoother if we were there at the very beginning.

Remember, it is a bankruptcy crime and a federal crime to fail to disclose or give false information in your bankruptcy. It is imperative that you discuss honestly and openly with your attorney all the issues brought forth in these pages.

I hope you enjoy this book and find it useful.
Debts repaid to family members or friends, and even business associates, within one year of filing bankruptcy can be recovered by the Bankruptcy Court Trustee (the person appointed by the court to administer the case). Under bankruptcy laws, family members and friends are considered “insiders” and cannot be treated ahead of regular creditors. The trustee will argue that it is up to them to determine who gets paid back.

It is not unusual for someone in debt to turn to family and friends for help. Close family and friends see the effects that uncontrollable debt has on their loved one, and want to help in their time of need. Whenever a client gets some funds, their first instinct is to repay the debt. That is fine if you are not considering bankruptcy.

But if you think there might be a slight chance of filing bankruptcy, DO NOT REPAY THE DEBT. You can always pay back the loan after the bankruptcy is finished.

This rule also applies if you make a payment on behalf of a friend or relative, such as paying your sister’s car payment for months before filing.

There are some exceptions to this rule — for example, a son who has been paying a mortgage held by his father for years prior to filing — but you should consult with an experienced bankruptcy attorney if any payments are being paid to a friend or relative.

If you have violated this rule, the bankruptcy trustee can require you to repay the debt to them, or even file a lawsuit against your relative or friend to recover the funds. That is a fast way to lose a friend!
A client of mine borrowed $12,000 from her mother when she lost her job to pay bills. She found work a few months later, and started paying back her mother $500 per month because that was the promise she made to her mother. Unfortunately, her other debts caught up with her and she had to file bankruptcy. She paid back $3,000 to her mother before filing, and the trustee demanded the full amount or threatened to sue her mother. We were able to resolve the issue with the trustee for a lesser amount. She could have avoided having to pay anything back to the trustee if she had filed bankruptcy first, and then paid her mother later.

PAYING BACK YOUR FAVORITE CREDITOR BEFORE FILING BANKRUPTCY

Debtors will often want to pay off the debt to a favorite creditor because they have a long relationship, and they were always good to them. Clients are also worried that they won’t have credit available after bankruptcy, so they figure that if they pay off the creditor’s bill, they will keep their credit after bankruptcy.

The bankruptcy trustee can recover any large or unusual payments, normally over $600, paid to a creditor within 90 days of filing your case. There is no advantage to paying off a large balance right before filing bankruptcy since the funds will be recovered by the trustee. You can make things worse for yourself if you take money from another credit card to pay the debt, since that may be considered fraud; and if you cash in protected funds, like a 401(k), to pay it off, that money is lost forever.
**Bottom line:** If you are considering bankruptcy, pay your normal monthly payments and do not pay off or pay extra to your favorite creditor. Our office can direct you to resources to rebuild your credit after bankruptcy.

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**CREDIT CARD PURCHASES AND CASH ADVANCES**

During hard times, people use their credit cards to pay their everyday living expenses, and mistakenly believe that they can get rid of that debt later in bankruptcy. When they file bankruptcy, they find out it is not quite that simple.

Credit card purchases and cash advances on credit cards — normally over $500 for purchases, $750 for advances — made within 90 days of filing for purchases, 70 days for advances, is presumed to be fraudulent and may be non-dischargeable debt. Credit card companies will often file a lawsuit to leave you liable for the debt, and you will have to prove to the bankruptcy judge that there was no fraud. These cases are expensive and time consuming. Sometimes credit card companies will object to purchases made over the previous 3 months if they believe you knew or should have known you were filing bankruptcy. They will point to the fact that you consulted with a bankruptcy attorney months before as proof that you were considering bankruptcy to prove their case.

Payday loan companies fall within this rule, and are usually more aggressive. They should be avoided if at all possible.

**Bottom line:** Do not incur any new credit card debt or advances of any kind within 6 months of filing.
REAL-LIFE EXAMPLE

A client of mine, a hard-working family man who was very handy with tools, decided to refurbish his older home. He did all the work himself and did a great job. He put the costs of all the materials on a low-interest credit card, which seemed like a good idea at the time. The total cost of the materials was a little over $18,000. Right before he finished the job, his employer unexpectedly laid him off. He was already on the verge of bankruptcy and his loss of employment tipped him over. After a few months, he had no choice but to file bankruptcy, and the credit card company objected to the discharge of the $18,000 (which was over $22,000 by then) and demanded full payment. After examining his options, he decided to settle for a lesser sum with the credit card company over a period of 36 months.

P.S. He paid it off early and is happy and debt-free.

ANTICIPATING AN INHERITANCE

If a debtor inherits money or property within 6 months of filing bankruptcy, those assets automatically become the property of the bankruptcy estate and can be seized, liquidated, and distributed to creditors in a Chapter 7 case. In a Chapter 13 case, the assets may be considered in calculating your payments to the court. If you are already in a probate proceeding before you file, you need to discuss the situation with an experienced bankruptcy attorney.

Some people mistakenly believe that if they have not transferred probate estate property into their name (for example, title to their deceased parent’s home was never transferred), it doesn’t count in bankruptcy.
That is simply not true, and interest in the property must be disclosed in the bankruptcy.

**Bottom line:** If you have a very ill relative or friend and you know you are their beneficiary, or are in the middle of a current or possible probate proceeding, do not file bankruptcy until you discuss the matter with a bankruptcy attorney.

**REAL-LIFE EXAMPLE**

I had a single man in his early 30s come to me for a Chapter 7 bankruptcy consultation. Although he was troubled by his debts, I felt there was something more. I soon realized he was a very private man, and was reluctant to discuss his true concern, which was his very sick mother. He then told me his mother was dying from cancer, and the doctors felt she would pass within 2 months, which he refused to believe. For some reason he was eager to file bankruptcy right away, but I strongly advised him not to file since he may lose whatever he inherited from his mother (which turned out to be her home, worth over $250,000), and I asked him whether he would rather spend all his available time and energy with his mother, rather than on legal matters. He thanked me and left. I followed up with him after our appointment, and 3 months later he called and let me know his mother had passed away. After I helped him get her affairs in order, he sold her home, settled his debts, and avoided bankruptcy altogether. If he had filed bankruptcy when he had wanted to, he would have lost all of his legacy.
ANTICIPATING MONEY FROM A CLAIM OR LAWSUIT

Medical bills are often a major cause of people filing bankruptcy. Sometimes, these bills arise from an auto accident after which the injured person cannot work, but the bills still need to be paid, and medical expenses start piling up. Relatives and friends will often tell the individual to file bankruptcy to get rid of these bills. That can sometimes be a huge mistake.

You see, if the injured person has a personal injury claim and files bankruptcy, the personal injury claim becomes the trustee’s property. The trustee gets control of all the proceeds and decides who gets paid, which often leaves the injured person with nothing. That is why it is very important to discuss your debt and potential injury with a bankruptcy attorney and personal injury lawyer before filing bankruptcy. They will be able to advise you whether you should or should not file bankruptcy. Sometimes the value of your injury case may be so low that it makes more sense to file immediately, get rid of the out-of-control debt, and let the trustee keep the small injury settlement. Other times, the potential settlement may be substantial and it may be best to not file right away.

This rule does not only apply to personal injury claims. If someone has any current or potential claim, this issue must be considered. This includes any civil lawsuit, employment case, discrimination claim, or even a case of someone owing them money. The trustee can pursue the claim, even if you choose not to.
REAL-LIFE EXAMPLE

A few years ago, an older gentleman came in for a bankruptcy consult. He told me he was fired from his job, and his financial situation had reached a critical point. He was very reluctant to file bankruptcy, but felt he had no choice. After further discussion, it appeared to me that he may have a good employment discrimination case, and I referred him to an employment attorney. He did indeed have a great case, and I advised him not to file bankruptcy at that time, since the trustee would have control of the employment claim and would decide who got paid if there was a recovery. A few months later, he reached a very favorable settlement in his employment claim and had more than enough funds to settle his debts, under his terms — and even had money left over.

CASHING OUT RETIREMENT FUNDS

Bankruptcy laws are very generous when it comes to retirement funds. The bankruptcy trustee cannot touch any retirement accounts that are covered under certain sections of the Tax Code. This includes 401(k)s, 403B, and most IRAs. If those funds are cashed out and deposited into a regular bank account, they are no longer protected. Except for certain IRA rollovers and other very limited situations, cashing out your retirement accounts unnecessarily puts your retirement funds in danger. Creditors know they cannot touch these funds, but they will often try to convince you to tap into the accounts to pay their bill since these accounts are typically your biggest asset. They cannot force you to cash in, and if you do, there are usually hefty penalties and taxes due. What’s more, you normally have to pay back loans against them.

Bottom line: Leave these funds alone. Retirement funds may be your only safe asset. Don’t let creditors convince or threaten you to give them up.
I had a consultation with a client in 2010 who filed Chapter 7 bankruptcy without an attorney. A few months before filing, he cashed in his IRA account, and bought $30,000 in gold and silver coins. He thought he would get a better return on his investment with the coins. Unfortunately, he did not think about this decision before filing bankruptcy. The trustee moved quickly and was about to get a court order requiring him to surrender the gold and silver. He was unable to retain me to help him, and there was little I could do since the damage was already done.

As a courtesy, I spoke with the trustee and helped start a dialogue between the trustee and the man, which resulted in a fair resolution. This could have been completely avoided if the client had never converted his IRA, since IRAs are completely protected from creditors and the bankruptcy court.
SELLING OR TRANSFERRING TITLE TO PROPERTY

This is one of the most common problems I see in my bankruptcy consultations. My clients are inherently honest, hardworking people, doing the best they can to get by. They almost always know they cannot run up a bunch of debts or transfer, hide, get rid of, or sell their property right before filing bankruptcy. What they often do not understand is that innocent or honest transfers could also cause problems.

When you file bankruptcy, you must disclose all sales or transfers of property made within 2 years of filing bankruptcy. The trustee will examine the sale or transfer, and may file proceedings to obtain the property to pay creditors. If there is evidence that the transfer or sale was done to hide assets, it could be considered a bankruptcy crime and you will need to consult with a criminal lawyer.

Usually the trustee will see if you sold or transferred the property for less than fair market value, if you sold or transferred it to a relative or friend, and how far back the transaction took place. If you sold your car for fair market value, to a dealership, 1 ½ years before filing, the trustee might but will probably not object. If you transferred title to your car to your adult son, for free, a month before filing, the trustee will most definitely object.
REAL-LIFE EXAMPLE

A common scenario I see in my bankruptcy consultations involves children and cars. Typically, a teenaged child will work hard during high school and college to buy and pay for a nice car. The auto is titled in the parents’ names, either for insurance purposes or because the child does not have a credit history to finance it on his or her own. The original intent is to transfer title to the child once it is paid off. The parents then decide they need to file bankruptcy, but the title was either never actually transferred or was recently transferred to the child. The trustee then demands the client turn over the auto, and the client is surprised because in their mind, the car was never really theirs.

DEPOSITING MONEY IN BANK ACCOUNTS WHERE YOU OWE DEBT

Credit unions are great places to do your banking when you are in good standing, but if you fall behind on any credit accounts held by them, you will have problems. What most clients don’t realize is that when you open a membership with a credit union, you agree that any funds you deposit with them can be used as collateral for any debt. If you fail to make a payment on a credit card or other debt, they can automatically deduct funds from your deposit accounts to cover it, without prior notice. It’s not just credit unions. Certain banks also have a right of setoff. If you file bankruptcy and owe the bank any money, they can administratively freeze your account, and take money out of your account to pay the bill. You cannot force them to give it back.
Bottom line: If you are thinking of filing bankruptcy and you have a bank account with a credit union or bank where you owe any debt, you must stop any direct deposits going into the account, and make sure you do not have any CDs, checking, savings or other deposit accounts of any value. You do not need to close the deposit account, just leave enough in the account to keep it active. Plan ahead. It sometimes takes 30 days to change direct deposits and bank drafts. Some credit unions have frozen accounts even if they have only a reasonable suspicion that you may file bankruptcy, so please beware. The last thing you want to deal with is numerous bounced checks due to your account being frozen without prior notice.

MARRIAGE, DIVORCE AND BANKRUPTCY

Changing your marital status before you file bankruptcy can have a dramatic effect on your case. In 2005, the bankruptcy laws were changed to include an income test to determine whether a debtor can file Chapter 7 (straight bankruptcy) or has to file Chapter 13 (repayment bankruptcy). For example, in Northeast Florida, if a single debtor earned a gross income, based on the 6 months prior to filing, of around $41,000 per year in 2014, he would automatically qualify for Chapter 7 under the Bankruptcy Means Test. However, if the debtor marries someone earning a substantial income, he may not qualify. The court considers all household gross income at the date of filing, which includes the income of the new spouse.

Regarding divorce, I do not recommend that a debtor file bankruptcy if he or she is in the process of or considering filing for divorce. I do sometimes recommend bankruptcy if a client’s spouse files with them before divorce proceedings begin. If a couple is in the process of a divorce when a bankruptcy proceeding is filed, then the property division aspects of the divorce come to a complete stop.
The divorce court can still order the divorce and award custody, visitation, child support and alimony, but cannot rule on property issues until the bankruptcy is complete. The bankruptcy court will also decide which marital debts are dischargeable and which are not. Also, it is best to wait to see what the final judgment in the divorce directs regarding child support and alimony payments, along with property division. These issues will impact the calculation of the Means Tests and personal property exemptions.

**Bottom line:** If you are considering divorce and want to file bankruptcy, I strongly recommend you have detailed consultations with both an experienced bankruptcy attorney and a family law attorney, and make sure both attorneys consult with each other before anything is filed.

**INTENTIONALLY LEAVING OUT DEBTS**

When you file bankruptcy, the law requires you to list all your assets and all your debts. You do not have to list a credit card with a zero balance, but you cannot intentionally leave out or “save” your favorite card and pay it separately. You can always contact a creditor after bankruptcy and make payment arrangements. They may or may not work with you. You should also list debts that were charged off. A charged-off debt does not mean the debt was eliminated. The debt is often sold to another collector, and they will continue the collection process. List all debts involving repossessions and foreclosures. The debt is not always eliminated when the property is returned, and there still may be a balance due. Finally, make sure you list any debts you co-signed or personally guaranteed.
REAL-LIFE EXAMPLE

I had a consultation with a woman who filed bankruptcy on her own 2 years before she saw me. She did not list the car she co-signed for her daughter since she assumed she did not have to, and her daughter was the primary debtor on the car. After her bankruptcy case was finished, the finance company repossessed her daughter’s car, and got a judgment against the client. If she had listed the co-signed debt in her bankruptcy, that could have been avoided.

BONUS! BONUS! BONUS!

There are so many other things you can do to hurt your bankruptcy case. I call these the DON’TS. Below are listed just a few. Always discuss these items with an experienced bankruptcy attorney. Here you go:

• DON’T file if you are about to receive a tax refund.
• DON’T sell or buy a home before you file.
• DON’T fail to disclose any businesses in which you were involved in the past 6 years, no matter how big or small.
• DON’T write or fail to disclose bad checks.
• DON’T gamble.
• DON’T tell a creditor you intend to pay them even if you file bankruptcy.
• DON’T fail to appear at any court hearings.
• DON’T file if you expect substantial medical expenses in the very near future.
• DON’T file without talking with a bankruptcy lawyer if you are changing jobs, moving out of the state, or expecting a child.
• DON’T pay off a car loan, mortgage, or any secured debt before filing.
• DON’T throw away financial records such as recent pay stubs or tax returns.
• DON’T stop making payments on property you want to keep, such as cars and homes.
• DON’T hide assets or debts.
• DON’T misrepresent or fail to disclose any facts to your lawyer.

WHERE DO WE GO FROM HERE?

If you can relate to this book in any way, then you probably have a few questions. You may be uncertain about whether you have a valid reason to file for bankruptcy protection. So I am offering a FREE consultation and case audit to review your situation with you. Please call me at (904) 296-7704 while this book is still fresh in your mind. I will set aside up to one hour to meet with you at no cost and with no obligation!

After our meeting:

1. You will have CLARITY about your situation.
2. You will truly understand the depth and severity of your problems.
3. You will have learned details about your problems that you didn’t even know existed.
4. You will understand your options.
5. You will understand how I can help you recover the excellent credit score you once had, or maintain it if you still have one.
6. You will have a plan of action.

Finally, you will know that your future can be so much bigger than it appears to be today. You can get your life back.
THE WORST THING YOU CAN DO IS WHAT MANY PEOPLE DO: DELAY OR DO NOTHING

I have encountered many people who decided to delay and put things off only to lose money and valuable property later on, when all they needed to do was file bankruptcy. Please don’t lose your personal assets that you’ve worked so hard to attain, only to find out you could have protected them in bankruptcy.

Remember, IGNORING YOUR FINANCIAL PROBLEMS WON’T MAKE THEM GO AWAY. Creditors are like hungry tigers, prowling around you, waiting for the right time to pounce. They will eventually attack, and won’t let up until you surrender.

Please don’t let this happen to you. If you are in a situation where you don’t know what to do and you can’t seem to figure things out, then that’s even more of a reason to call my office now. I understand that you have a lot of questions and concerns on your mind because this is a life-changing decision. However, not doing anything at all won’t change your situation.
I will be happy to answer all your questions and give you the benefit of an objective analysis. Then you will decide what to do next. Even after your consultation, you are under no obligation to use me as your attorney.

I have included at the end of this book an example of the information sheet I would review with you during our meeting. You will receive one to fill out prior to our meeting so we can make the most of our time together.

I hope I have made this as easy as possible for you.

Thanks again for taking the time to read this book. I look forward to hearing from you.

P.S. If you have a relative or friend who might benefit from this book, please pass it along or contact me. We can get them this and other valuable information right away. A debt-free life with a bigger, better future is the best gift you can give them.
YOUR BANKRUPTCY EVALUATION

The purpose of the next few pages is to get very general information about your finances in order to get a snapshot of your case. We do not need detailed or exact information at this time; we will get that later. Please answer the questions as best as you can.

ALL ANSWERS WILL BE CONSIDERED CONFIDENTIAL

1. Do you own or are you buying a home?  □ Yes  □ No
   If yes...  1st mortgage monthly payment: $_________
              How many months behind_________

2nd mortgage or home equity line on home?  □ Yes  □ No
   If yes...  Monthly payment: $_________
              How many months behind_________

Association dues or fees?  □ Yes  □ No
   If yes...  Monthly payment: $_________
              How many months behind_________

Are taxes and insurance part of the mortgage payment?  □ Yes  □ No

Who is on the title to the property? ____________________________

2. Do you own any other land or homes?  □ Yes  □ No
   If yes...  1st mortgage monthly payment: $_________
              How many months behind_________

2nd mortgage or home equity line on home?  □ Yes  □ No
   If yes...  Monthly payment: $_________
              How many months behind_________

Association dues or fees?  □ Yes  □ No
   If yes...  Monthly payment: $_________
              How many months behind_________

Are taxes and insurance part of the mortgage payment?  □ Yes  □ No

Who is on the title to the property? ____________________________
3. Do you own or are you buying any cars or trucks?  □ Yes  □ No

If yes...

VEHICLE 1

Year _______  Make___________  Model______________

If paid for, how many miles? ________________________

If not paid for, monthly payment of: $___________ for _________ years

If not current, behind by _______ months

Who is on the title to the vehicle? _______________________

VEHICLE 2

Year _______  Make___________  Model______________

If paid for, how many miles? ________________________

If not paid for, monthly payment of: $___________ for _________ years

If not current, behind by _______ months

Who is on the title to the vehicle? _______________________

VEHICLE 3

Year _______  Make___________  Model______________

If paid for, how many miles? ________________________

If not paid for, monthly payment of: $___________ for _________ years

If not current, behind by _______ months

Who is on the title to the vehicle? _______________________

VEHICLE 4

Year _______  Make___________  Model______________

If paid for, how many miles? ________________________

If not paid for, monthly payment of: $___________ for _________ years

If not current, behind by _______ months

Who is on the title to the vehicle? _______________________

VEHICLE 5

Year _______  Make___________  Model______________

If paid for, how many miles? ________________________

If not paid for, monthly payment of: $___________ for _________ years

If not current, behind by _______ months

Who is on the title to the vehicle? _______________________
4. Do you own or are you buying any motorcycles, RVs, boats, ATVs?  □ Yes  □ No

If yes...
Year_________  Make_____________  Model_____________

If paid for, how many miles? ______________
If not paid for, monthly payment of: $____________ for ________ years
If not current, behind by ________ months
Who is on the title to the vehicle? __________________________

5. Do you owe federal taxes?  □ Yes  □ No

If yes, what years and amount? __________________________

6. Do you have student loans?  □ Yes  □ No

If yes, what is their status? __________________________

7. How much is your unsecured debt (debt without collateral), such as credit cards, medical bills, personal loans, etc.

- □ $0 to $5,000  □ $30,000 to $50,000
- □ $5,000 to $15,000  □ $50,000 to $100,000
- □ $15,000 to $30,000  □ over $100,000

8. Have you had any repossessions or foreclosures in the last 5 years?  □ Yes  □ No

9. Are there any lawsuits currently pending against you?  □ Yes  □ No

10. Are your wages being garnished?  □ Yes  □ No

11. How long have you lived continuously in Florida? _________
12. Have you ever filed for bankruptcy?  □ Yes  □ No

If yes, when did you file? __________________________
Chapter 7 or 13? ______________
Did you get a discharge?  □ Yes  □ No

13. Do you pay child support or alimony?  □ Yes  □ No

If yes, how much per month?_________ Are you current? ___

14. Have you owned a business in the last 5 years?  □ Yes  □ No

If yes, please name the business, when it started and ended
________________________________________________

15. Are you…  □ Married  □ Separated  □ Single

16. Do you have any dependents (children under 18, full-time college students, elderly or disabled persons you claim on your federal taxes) living in your household? Do not count spouse.

□ Yes  □ No  If yes, how many____________

17. What is your average GROSS yearly income, and from what resources?________________________________________________________

________________________________________________________

Have you earned □ same  □ more  □ less  in the last 6 months?

What is your spouse’s average GROSS yearly income, and from what resources?________________________________________________________

________________________________________________________

Have they earned □ same  □ more  □ less  in the last 6 months?
WHAT DO YOU CONSIDER THE MOST IMPORTANT ISSUE(S) THAT NEEDS TO BE RESOLVED (such as bad credit score, collection calls, wage garnishment, lawsuits, etc.)? 

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

He is a member in good standing of the Florida and Georgia bar associations, and is admitted to practice in all Florida Courts and The United States District Court for the Middle District of Florida. Since he began practicing law in 1985, he has filed over 1,000 bankruptcy cases.

His mission is to help honest, hardworking people protect their property from creditors and eliminate debt through Chapter 7 & 13 Bankruptcy, Defense of Creditor Lawsuits, Foreclosure & Student Loan Assistance, and Credit Score Rebuilding.

E. R. Mousa has written publications and presented seminars to attorneys and non-lawyers alike in the area of bankruptcy, as well as other areas of the law, throughout the North Florida area.