SPECIAL REPORT

The 10 Myths of Filing Bankruptcy

Your about to discover the little-known strategies that can save you from needless heartaches and protect your future

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MYTHS and misinformation continue to spiral around bankruptcy. Creditors want to confuse or frighten. Friends and relatives may have bad information or information that is now outdated.

MYTH 1: It is hard to file bankruptcy because of the new laws that have been passed.

TRUTH: The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) went into effect on October 17, 2005, so these changes are no longer "new." BAPCPA made several significant changes to the United States Bankruptcy Code, imposing many additional requirements for individuals seeking bankruptcy relief. Notwithstanding the additional requirements and restrictions imposed by the changes, millions of individuals in the United States have obtained bankruptcy relief since the implementation of BAPCPA.

MYTH 2: I will lose important assets like my house and car if I file for bankruptcy.

TRUTH: The goal of filing for bankruptcy relief is to obtain a "fresh start." The Bankruptcy Code allows the Debtor to keep a certain amount of equity in assets, including real estate, a motor vehicle, retirement plans, and more. An experienced bankruptcy attorney should review your assets and the available exemption laws, to determine if any assets are at risk, and suitable alternatives, before filing a bankruptcy case.

MYTH 3: I can't file for bankruptcy if I have a job (especially a good job).

TRUTH: The goal of a bankruptcy filing is to help a Debtor obtain a "fresh start." Employment, especially a well paying position, will help achieve that result when combined with a discharge of debt. Most people seeking bankruptcy relief are employed, but still struggle to pay bills and meet their regular living expenses. A good job should make it possible to emerge from bankruptcy with the ability to afford regular living expenses, and begin making contributions to a retirement plan.

MYTH 4: I should try credit counseling before even considering filing for bankruptcy.

TRUTH: Many people attempt credit counseling or debt management plans instead of seeking bankruptcy relief. Frequently, these people end up filing bankruptcy after a period of time, and thousands of dollars spent on the payment plan. Credit counseling plans are based on the voluntary participation of the creditors, but many creditors will not participate in the payment plan, and still take steps to collect the debt. Debts that have been reduced to judgments, auto loans and mortgage debts, are not usually provided for in the payment plan, and these creditors will seek payment. Bankruptcy cases make provisions for all debts, and but for a small number of exceptions, creditors may not contact Debtors without court approval.

MYTH 5: I can't file for bankruptcy more than once.

TRUTH: After BAPCPA, an individual who received a Chapter 7 discharge in a case filed within eight (8) years, may not file a new Chapter 7 case. Chapter 13 bankruptcy is available, however, and will also impose an "Automatic Stay" to stop most creditors' debt collection activity.

MYTH 6: Filing bankruptcy will ruin my credit. I’ll never be able to buy a house or car again.

TRUTH: A bankruptcy filing can stay on a credit report for seven to ten years. Although the fact that you filed bankruptcy will stay on your credit report, you can begin rebuilding your credit score once your bankruptcy is discharged. We have clients who were able to purchase affordable vehicles shortly after receiving their discharge. Other clients bought their first home, or refinanced their home mortgage within two years after the bankruptcy discharge. Chapter 13 clients have obtained automobile loans and mortgage refinancing while in active Chapter 13 cases.

MYTH 7: My spouse has to file with me if I choose to file bankruptcy.

TRUTH: There is no requirement that a married couple has to file jointly if one spouse chooses to file for bankruptcy relief. In many situations, especially where there is joint debt, it may be wise for both spouses to file together. However, there are some instances where a spouse does not want to file, in order to maintain good credit. There are times that a spouse should not file due to the risk of loss of non-exempt assets. An experienced bankruptcy attorney can review the particular situation and render advice on the risks and benefits of a joint bankruptcy filing.

MYTH 8: Employers discriminate against people who have filed bankruptcy.

TRUTH: The Bankruptcy Code prevents employers from firing you just because you filed bankruptcy. This prohibition applies to both public and private employers.

MYTH 9: Only deadbeats file for bankruptcy.

TRUTH: Most people who file bankruptcy did not do anything risky or careless that led to financial distress. They have usually experienced a life-changing event, such as a serious illness or accident; the loss of a job; or a divorce, which created havoc and financial devastation. Despite their economic downturn, most struggle to pay their bills for months, or even years, and seek other types of relief, to little or no avail, before seeking bankruptcy relief.

MYTH 10: My bankruptcy is simple – any bankruptcy attorney can handle it.

TRUTH: While some people will choose the attorney that is the "least expensive" or choose to file without an attorney, because they have a "simple" case, such a decision can result in the loss of thousands of dollars in assets or other unintended consequences. Filing a bankruptcy case is more complex than completing and filing the appropriate forms. An experienced Massachusetts bankruptcy attorney who follows bankruptcy law closely, can thoroughly review your assets, the appropriate exemption laws, and your pre-bankruptcy financial affairs to help ensure a successful outcome.