

The “How To” Notice

Filing a Bankruptcy Case: Things You Need to Know [Adapted § 527(c) Notice]

This Notice is intended to provide you with reasonably sufficient information about your bankruptcy case and the information you have to provide. Be sure to ask your attorney if you have any questions.

Some Basics about Bankruptcy

In addition to the general information you were given in the notice entitled, “Notice to Individual Consumer Debtor under § 342(b) of the Bankruptcy Code,” there are some things you need to know about bankruptcy.

The goal in filing a bankruptcy case is to get a “discharge” of your debts. The “discharge” is a court order that prevents your creditors from collecting the amounts you owed before you filed for bankruptcy. Some of your debts, like child support or student loans, might not be discharged. You and your lawyer will talk about any of your debts that might not be discharged.

The most important thing for you to understand is what is expected of you when you file for bankruptcy. In exchange for getting rid of your debts, you must make “full disclosure.” This means you must give complete and accurate information about everything you own and everything you owe. Do not leave anything out.

Most people who file for bankruptcy are not dishonest and they don’t plan on not telling the complete truth to the trustee and the bankruptcy court. What’s more common is for people to fail to disclose all the required information because they don’t want certain people to know they’re filing for bankruptcy, because they want to protect a friend or family member by “keeping them out of the bankruptcy,” or for similar reasons.

But it doesn’t matter if your intentions are good. THE LAW DOES NOT ALLOW YOU TO MAKE EXCEPTIONS.

It’s also common for people to think they file bankruptcy “against” their creditors, and that they can choose to leave certain creditors out. This is not true. All of your creditors are included in your bankruptcy, whether you want them to be or not. If you don’t provide information about your creditors so that they get notice of your bankruptcy, your debts to them might not be discharged. Worse, keeping creditors in the dark may lead to the denial of your discharge. In other words, all of your creditors can still collect what you owe them after the bankruptcy.

You also need to be sure you understand what “property” means before you begin compiling information for your attorney. Many people think “property” means only tangible goods, like furniture, a house, or a car. But “property” means much more, including:

- Money that anyone owes you, even the tax refund you expect to get next year
- Deposits, such as those held by landlords or utilities
- Your right to sue anyone for any reason (for example, if someone hurt you or damaged your property, or if someone didn’t honor the promises they made in a contract with you)
- Repossessed property
- Interests in certain insurance policies, annuities and retirement accounts
- Rights in licenses, patents, copyrights, and other, similar items
- Animals
- Farm subsidies

Differences in state laws, the availability of exemptions, and other matters will determine what property you get to keep, and your attorney can help you with that.

What’s important is for you to be sure you aren’t leaving out information that the bankruptcy court expects you to disclose. People sometimes leave out information because they don’t think of something as being “property” or because they think the property “isn’t worth anything.” Failure to list everything can hurt your chances of getting your bankruptcy discharge. It could also affect your own legal rights to property, meaning you might lose property that you could have kept if it was disclosed.

Remember, your duty is to disclose everything and cooperate with the trustee. The value is not as important as the fact that the item is listed. If you aren't sure whether anything in particular needs to be included, just ask your attorney.

Information Needed to Prepare the Official Bankruptcy Forms

In order for your attorney to prepare all of your Official Forms completely and accurately, you need to provide the following information and, wherever possible, provide documentation relating to the information. For some of the items below, documentation is required. Indicate whether any of these documents are unavailable and provide a brief explanation why they are unavailable. Keep in mind that your attorney will ask you for other information, as needed.

1. Information about Creditors

You must provide the name and address for *all* of your creditors. If you have it, provide the account number as well.

The amount you owe each creditor must be stated in your bankruptcy papers. You can usually get this figure from your most recent bill or statement. Bring those bills and statements when you meet with your attorney.

You must provide statements, bills, collection letters or similar correspondence that includes the account number received from *each* of your creditors in the last 90 days. This might seem like a lot, but it is necessary so that your attorney has the right address to give your creditors notice of your bankruptcy. Your creditors have more rights against you if the notice of your bankruptcy is sent to the wrong address. If you don't have letters or statements going back 90 days, give your attorney whatever you have.

2. Information about Your Property

All of your property must be disclosed. Some types of property can be grouped into a single category, such as your clothing, which can be generally listed as "wearing apparel." Any particular item within that group that has a value that is unusual for that category must be listed separately. For example, you can group together all of your records and CDs, but if you have a copy of the Beatles "Abbey Road" autographed by John Lennon, it has to be separated from the group and listed on its own.

Some of your property might serve as "collateral" for a debt you owe. This is true for many people's cars, for example. While you are still making payments, the creditor has a "lien" on the car (the collateral), which allows the creditor to repossess the car if payments aren't made. A creditor in this situation is called a "secured creditor." For any of your property that is "collateral," you must provide a copy of the contract or other documents relating to your loan. You must also provide a copy of your registration showing who the legal owner of the car is.

Also make note of any of your property that you bought with a store credit card rather than a general credit card like Visa, MasterCard or Discover. The store might claim a lien on that property and may be a secured creditor.

The value of all of your property (meaning what your property is worth) must also be disclosed. For property that is *not* collateral, you can determine the value in different ways, but you must make a good-faith estimate. One method is to imagine you are going to replace a piece of property by buying it at someone else's garage sale. What would you pay for it? That is the value that needs to be listed. For some kinds of property there are guides available that provide estimated value, and some of these are available on the Internet.

The rules are very different if your property is collateral. The Bankruptcy Code requires that you value this kind of property at "replacement value." For property you acquired for personal, family, or household purposes, this means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Here's an example. Suppose you bought a computer on credit. You still owe the financing company for the computer and they can repossess it if you don't pay. Your computer is "collateral" and you need to find out what its "replacement value" is. You can't use the garage sale example because that's not a "retail merchant." You need to know what a store would charge you for property that's like yours. That doesn't mean you have to find out what a *new* computer would cost. Instead, you need to know what a

store like the Salvation Army or [for-profit, used-goods merchant]¹ would charge you for a computer that's about the same age, and in about the same shape, as your computer.

3. Information about Your Income and Expenses

Recent changes to the Bankruptcy Code have made income and expense disclosures very complicated. In addition to providing information about your actual income, you must also provide what's called your "current monthly income," which is, roughly speaking, an average of all the money you received in the last six months. "Current monthly income" isn't just what you earned at work, but amounts received from virtually any source, like interest on savings accounts or child support payments.

Expenses are just as complicated. Again because of the changes to the Bankruptcy Code, what you actually spend for things like housing, transportation, or food is not relevant because the new law uses guidelines developed by the IRS to determine what these expenses are for you.

Your attorney will prepare your income and expenses schedules, which will have to be filed with the bankruptcy court. Your part is to be sure you provide all of the information your attorney asks you for.

Documents Required by the Court

Your attorney will let you know what documents you have to file with the bankruptcy court to file your case and, depending on the circumstances, to deal with matters that come up after the case has started. You WILL have to provide the following documents:

- The certificate you received from the credit counseling agency that provided your mandatory counseling session and any budget plan or analysis the agency gave you
- Copies of all of your pay stubs or other evidence of payment you received in the 60 days before your bankruptcy is filed
- A statement that describes any increase in your income or expenses that you expect will occur over the 12 months after you file for bankruptcy
- A copy of the tax return you filed with the IRS that was due last April 15

If you don't provide these documents (and others that your attorney tells you about) you could face serious trouble, including the chance that your case will be automatically dismissed – without you getting your discharge.

I/we have read and understand this Notice and agree to cooperate with my/our attorney and to comply with my/our duties in the bankruptcy case.

_____ Date: _____
Debtor

_____ Date: _____
Co-debtor

¹ Attorneys will need to provide the name of a for-profit, used-goods merchant known in the area of practice.