

Bankruptcy

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Consumer Education and Training Services (CENTS)

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In some situations, you may consider recommending that your client seek legal counsel to file bankruptcy. The decision to file a bankruptcy is a complex one, and requires consideration of both a client's goals and his/her financial situation in total. Generally, bankruptcy can be a good alternative if the client's debts are primarily unsecured and dischargeable, and the client has little to no nonexempt property. That said, even in situations where a client may have nonexempt assets that would be subject to liquidation in a bankruptcy proceeding, the benefits of a bankruptcy discharge may very well outweigh any potential downsides (such as loss of nonexempt assets). Even then, some forms of bankruptcy (eg. Chapter 13) may be available to your client, in which he/she may be able to keep their nonexempt assets by making payments to creditors over time. Given the complexities of bankruptcy, and the various forms of bankruptcy available to individuals, consultation with an experienced bankruptcy attorney is a must.

Filing bankruptcy will bring immediate debt relief. However, there are some long-term considerations. A bankruptcy is public record and will stay on a credit report for 10 years. If your client gets a discharge after filing any bankruptcy, he or she cannot get another discharge for 8 years. Another consideration is that for the first few years after filing bankruptcy, most loans will likely come with higher interest rates and your client will not be able to get a Federally-backed mortgage for the first 3-years after the discharge order is entered.

If you are unsure if bankruptcy is the best option for your client then you should refer them to a qualified bankruptcy attorney. The National Association of Consumer Bankruptcy Attorney's website (nacba.org) is a good resource to find an attorney near your client. You should also check if there is a legal aid provider in your area and you can do that here: <https://www.lsc.gov/what-legal-aid/find-legal-aid> Your state and county bar associations may have free or low cost legal services as well.

Following is some additional information about bankruptcy filing.

The bankruptcy system is a constitutional right. Federal bankruptcy laws are designed for people caught in severe financial circumstances, such as an illness, loss of a job, or divorce. It gives people with excessive debt an opportunity to make a fresh start by reducing or eliminating the debt. While some debts will be eliminated (discharged), other will not.

The following are typically dischargeable debts that can be wiped away:

- Medical bills
- Credit card debt
- Rent
- Utility bills
- Deficiency balances (the difference between the amount you owe and the value of your property)
- Court judgments, such as property mechanic's liens
- Legal and accounting bills
- Department store and gasoline company bills
- Loans from friends and relatives

The following are non-dischargeable debts that cannot be wiped away:

- Alimony and child support
- Some student loans
- Certain federal, state, and local taxes
- Debts from fraud, larceny, and/or theft
- Fines and penalties for violating the law, such as traffic tickets
- Luxury goods or services purchased within 60 days of filing for bankruptcy, with a value of \$600 or more
- Debts not listed on the bankruptcy papers

Bankruptcy consequences:

A bankruptcy is public record and will stay on a credit report for 10 years. If one files Chapter 7 bankruptcy, a certain type of bankruptcy, he or she cannot file again for 8 years. Offers of credit/loans will most likely come with higher interest rates until you rebuild your credit again. Though a bankruptcy will immediately damage one's credit, it may also provide a fresh start so he or she can rebuild credit.

The decision whether to file:

The decision to file bankruptcy should be carefully considered. Guide your client to determine how long the process will take and how much it will cost to pay off the debt(s).

Your client will need assistance to determine if it is better for his or her overall financial situation to pay off the debt or file bankruptcy. Weigh the financial and other costs of bankruptcy versus the benefits. He/she will need to consider whether trying to pay off the debt will risk assets, such as mortgage payments and/or retirement contributions. Other questions to consider before filing bankruptcy include:

- If your client gets rid of accumulated debt, will there be enough money for daily living expenses?
- Are there any medical expenses coming up? (Ideally your client wants to be at his/her financial "bottom" when he/she files because of restrictions on filing again)
- Is there an inheritance of any money or a pending settlement?
- Has a credit card recently been used?

Depending on your client's situation, you may advise him/her to talk with a licensed bankruptcy attorney. Free consultants are sometimes available to discuss bankruptcy options. Below are some credible resources that you can recommend to your client.

- Find legal aid for low-income individuals and families: <https://www.lsc.gov/what-legal-aid/find-legal-aid>
- Find an attorney: <https://www.americanbar.org/directories/lawyer-referral-directory.html>

Complete the Family Reach spending plan, assets, and debt management worksheets with your client so he/she can share these materials with the attorney. Recommend that your client be prepared to provide the attorney with any court papers, tax returns, pay stubs, divorce papers, foreclosure notices, etc. that may help with considerations for filing bankruptcy.