

FILING BANKRUPTCY IN KANSAS

For over 35 years as a Kansas bankruptcy attorney I have counseled people in severe financial distress who need debt relief. Frequently, I have observed people made decisions while in dire financial straits that end up costing themselves thousands of dollars if they later file bankruptcy. This list provides some general, helpful information if you may have to file bankruptcy in Kansas; however, it is mandatory that a person considering bankruptcy consult with an attorney very promptly because every situation is different, there are many other issues if you are looking at bankruptcy and, in fact, there are exceptions to some of these tips. This brochure is not legal advice and does not create an attorney-client relationship.

1. DO CONSIDER REDUCING THE AMOUNT WITHHELD FROM YOUR PAY FOR TAXES

Most people get back a tax refund. If you expect a refund, consider reducing your withholding so that you do not get a refund. Even if you do not file bankruptcy your creditors generally can take your tax refunds by a court turnover order after they obtain a judgment. If you file bankruptcy, part of both Federal and State tax refunds for the year in which you file bankruptcy (and any unreceived refunds for prior years) are non-exempt property in Kansas and belong to your bankruptcy trustee who divides the refunds among your creditors. Therefore, it is usually wise whether you do or do not file bankruptcy to take steps to eliminate or lower tax refunds you receive each year. **WARNING:** Do not reduce your withholding so much that you will have a big tax bill to pay!

2. DO NOT USE YOUR CHECKING ACCOUNT

Generally, in Kansas, your creditors can garnish up to 100% of your checking account once they obtain a judgment against you. Further, in Kansas, any money in your checking account the day your bankruptcy is filed with the Kansas Bankruptcy Court is generally non-exempt property of your bankruptcy estate and

can be taken from you and divided among your creditors. The balance in your checking account should be at zero or close to zero the day your bankruptcy is filed with the court. Because checks can take many days to clear and sometimes people hold onto checks for a week or more before even depositing them, you should, generally, stop using your checking account at least 2-3 weeks before your bankruptcy is filed with the court. This way there is a better chance that all checks will have cleared your account. After your bankruptcy is actually on file at the bankruptcy court you can start using your checking account again. You may, however, have to provide an explanation to your bankruptcy trustee for any large sums deposited into your account within 3-4 weeks or so after your bankruptcy case was filed. This is due to the fact that, in Kansas, generally, any cash you have at the time your bankruptcy was filed with the court is non-exempt property and belongs to your bankruptcy trustee. Some people close out their checking account if they are having debt problems

3. DO NOT KEEP VERY MUCH MONEY IN A FINANCIAL INSTITUTION YOU OWE MONEY

If you are having financial problems, owe a bank, savings and loan or credit union and have money on deposit with the same institution in a checking account or savings account be aware that financial institutions can "setoff" (sometimes called offset) the amount you have in your account against your debt to them without advance notice to you. Apart from costing you money this can, in the case of a checking account, result in bounced checks.

4. DO STOP ANY USE OF CREDIT CARDS

Credit card companies have become much more aggressive about alleging fraud in bankruptcy court. Using your cards in the months before you file bankruptcy can lead to fraud litigation against you in bankruptcy court. Generally, if you are having financial problems you should immediately stop any use of credit cards whatsoever.

5. DO NOT REFINANCE OR TAKE OUT A SECOND MORTGAGE ON YOUR HOME UNTIL YOU TALK WITH AN ATTORNEY

People in severe financial difficulties, spurred on by slick TV ads, sometimes think refinancing a first mortgage or taking out a second mortgage on their home is the answer. Unfortunately, it often is not a good answer. If you are already deeply in debt, putting a second mortgage on your home or refinancing the first mortgage on your home to pay off many other debts often creates two major problems. First, you are usually just exchanging many smaller debts for one really huge debt that will take many years, even decades to pay off. Second, your home, in Kansas, is generally exempt from claims of your creditors, even in bankruptcy. Generally, your creditors cannot take your home. The most common major exception is if you have given a creditor a mortgage on your home and do not make the payments the creditor can foreclose and take your home. You should think carefully before putting a second mortgage on your home or refinancing your first mortgage if you are already in a very deep financial hole.

6. DO KEEP UP PAYMENTS ON PROPERTY YOU WANT TO KEEP

If you are having major money problems you are feeling a lot of pressure to make payments on bills. Frequently, because of collection phone calls or letters, people make the wrong choices in determining which bills to pay. Generally, in Kansas, despite what collectors may tell you, most creditors cannot garnish your wages until they have sued you and obtained a judgment against you. In most situations, outside of food and utilities, the top priority of your bill paying efforts should be making payments **on time** every month on exempt property you want to keep such as your home and/or a vehicle. Unsecured debts, such as Visa, MasterCard, Discover, American Express and

medical bills should be paid only after you have made your home and vehicle payments.

7. DO NOT GIVE AWAY PROPERTY BEFORE FILING BANKRUPTCY

People in dire financial straits sometimes outsmart themselves. They think that by giving away real estate or personal property (or selling such property to someone for a dollar) that they have made a smart move. Nothing could be further from the truth. Creditors have a number of ways they can learn about such transfers. Just a few techniques they can use are checking land transfer records, Department of Motor Vehicle records, subpoena your tax returns and bank records, examining financial statements and people "ratting" on you. If you are having financial problems, regardless of whether you do or do not file bankruptcy, giving away property or selling it for less than fair market value can result in trouble for you and whoever you gave the property to as it is considered a transfer to defraud creditors. Doing this will usually result in you and the person you transferred the property to being sued for fraud and, if you file bankruptcy, can result in denial of your bankruptcy discharge and other terrible problems.

8. DO NOT PAY UNSECURED CREDITORS LARGE SUMS OF MONEY IF YOU ARE LIKELY TO FILE BANKRUPTCY

Sometimes people about to file bankruptcy decide that they want to pay off or pay down a large unsecured debt owed to a favorite creditor such as a friend or relative before filing bankruptcy. This can be dangerous to the creditor you favor. Under the law, with only a relatively few exceptions, the payment of a total of \$600 or more to an old unsecured creditor within 90 days before you file bankruptcy is considered a preference to a creditor. Your bankruptcy trustee can file suit to collect the preference from your creditor to divide up among all your unsecured creditors, not just the unsecured creditor you chose to pay right before filing bankruptcy. Further, if the unsecured creditor you

pay happens to be an "insider" (which includes relatives and certain business creditors) your trustee can go after payments you made to that creditor within one year before your bankruptcy is filed.

9. DO NOT BORROW FROM YOUR 401K OR OTHER RETIREMENT PLANS

Early withdrawals from retirement plans can make you liable for penalties and taxes that cannot be discharged in your bankruptcy. Further, many retirement plans such as 401k and IRA plans are exempt from creditors under Kansas and/or Federal law, whether you do or do not file bankruptcy. If you don't use these exempt retirement funds in desperation you will have them after your bankruptcy case is over.

10. DO START KEEPING ANY BILLS AND STATEMENTS YOU RECEIVE FROM YOUR CREDITORS AND COLLECTORS

If you receive many bills and collection letters each month you may feel like throwing them away as soon as you receive them. Do not do this! Starting now, save bills, statements, collection letters and lawsuits you receive in one place so that if you file bankruptcy you will have these documents. By doing this, these documents not only will help prepare your bankruptcy paperwork but will be available if the U.S. Trustee demands to see them.

11. DO NOT TALK WITH COLLECTORS IF YOU ARE GOING TO FILE BANKRUPTCY

Generally, nothing but bad comes out of talking with collectors if you are going to file bankruptcy. An experienced bankruptcy attorney can tell you horror story after horror story of people doing very unwise things after talking with a collector. A collector is not your friend or advisor. Buy a cheap answering machine and screen all calls at home. At work, tell the switchboard operator you do not want any personal calls at work and request they take a message. You also have certain rights in dealing with collection agencies under the federal Fair Debt

Collection Practices Act. Be aware of "settling" debts until you talk with an attorney as "debt settlement" can have bad tax consequences for you. If you are already receiving phone calls from a collector get in and see an experienced attorney promptly.

12. DO START SAVING TO PAY FOR YOUR BANKRUPTCY NOW

Each year we see situations in which folks needing debt relief in Kansas are in a rush to file bankruptcy but do not have the money to pay attorney fees and court costs for the bankruptcy. If bankruptcy is likely, set your priorities now. One of your top priorities should be to set aside money **now** to help pay for a possible bankruptcy filing. Generally, in Kansas, once they obtain a judgment, creditors can garnish 25% of your wages and 100% of your bank accounts. Therefore, the least you can afford to set aside to help pay for your bankruptcy is 25% of your take home pay because, frankly, that is generally what your creditors are going to be getting by wage garnishment anyway. Other sources of money to help pay for your bankruptcy in Kansas include tax refunds, proceeds from the sale of property you own free and clear and/or gifts from friends or relatives. Just a little planning now can save you grief later. See our webpage [How Do I Pay For Bankruptcy?](#)

The above tips only cover a small number of issues if you are in a deep financial hole. Further, there are exceptions to some of the above tips. If you are thinking about filing bankruptcy, you should consult with a knowledgeable Kansas bankruptcy attorney now to learn what you need to do in your own personal situation to protect yourself and your family.

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