

The DO's & DON'Ts



of Filing Chapter 7 Bankruptcy



FAUCHER LAW
TAX & BANKRUPTCY

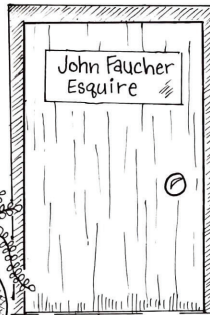
2945 Townsgate Road Ste 200, Westlake Village, CA 91362
JohnDFaucher.com (818) 889-8080

The Main Man at Faucher Law



John Faucher is an attorney with 25 years experience in the bankruptcy and tax worlds. He spent 10 years as a docket attorney for the Internal Revenue Service in Houston, Texas, and Thousand Oaks, California. He is a specialist in bankruptcy law and tax law as certified by the State Bar of California. He lives with his wife Karen, a dozen chickens, and three cats, including Sebastian, the feline paralegal.

Introducing Sebastian the Feline Paralegal



HEY BOSS,
WHAT'S UP?



Sophie Schmetz 05/20



2945 Townsgate Road Ste 200, Westlake Village, CA 91362

JohnD Faucher.com (818) 889-8080

The Don'ts

1. DON'T LET CONCERNS ABOUT YOUR CREDIT SCORE STOP YOU FROM FILING BANKRUPTCY

One of the biggest concerns most people have about filing bankruptcy is the hit their credit score will take as a result. The anxiety that their credit score will go down even a little stops many people from filing for bankruptcy altogether. Don't be one of them. All the ads that scare people about their credit score ("Let us help you repair your credit score!!!") are irrelevant to most people facing bankruptcy. You are having trouble paying your bills, so you shouldn't be borrowing more money! Credit scores impact the interest rate you can obtain from lenders:

the higher the credit score, the lower your interest rate. But, *if you're considering bankruptcy to cancel excessive debt, you have no business borrowing more money.* You have a much bigger problem than how expensive future loans will be. Deal with your existing bad debt first. That's your current and real problem. Moreover, almost everyone considering bankruptcy has already taken the biggest hit to their credit score, from the failure to pay their bills that got them considering bankruptcy in the first place. Many lenders see filing bankruptcy as a "good" thing: you are finally taking concrete steps to deal with the inability to pay your bills. Yes, your credit score may continue to decline



slightly after filing bankruptcy. Yes, the bankruptcy will remain on your credit reports for 7 years. Yes, you may have brief difficulty getting anyone to give you a loan or new credit card. However, most of my clients begin receiving solicitations for new credit cards and other offers of credit just a few years after filing bankruptcy. And chances are you wouldn't be in a reasonable financial position to take on new debt until a few years post-bankruptcy anyhow. Don't obsess about your credit score. That is NOT the issue to focus on.

Notes:



2. DON'T WORRY THAT YOU WILL LOSE EVERYTHING IN BANKRUPTCY - YOU WON'T

Many people are very concerned that filing for bankruptcy means losing everything they own. This is not true. In a chapter 7 bankruptcy, everything you own and owe is legally transferred to a Bankruptcy Trustee, who can then use your assets to pay your debts. However, you always keep all of your ERISA retirement accounts through bankruptcy: 401k's, 403b's, and up to \$1.3 million in IRA's. Then you are also allowed either the (1) "wild-card" exemption, worth approximately \$28,000 of assets and cash that you select, or (2) "homestead exemption" which allows you to keep \$100,000 of the equity in your primary residence in California (if you

are married and under age 65; if you're over age 65, you can keep \$175,000 of the equity in your primary residence). Legal ownership of the assets is transferred back to you when the bankruptcy is completed. However, the reality for most people considering bankruptcy is that they already owe more than they own, or close to it. Which is, of course, the whole reason bankruptcy is something you're consider-



ing! Stop fixating on what you might “lose” in bankruptcy. *Keep the focus of your thoughts on the good that will come from filing for bankruptcy: a chance to eliminate the debts you owe and make a fresh financial start.* Just make sure to give your attorney all the facts about your financial situation (good, bad, and worse), so s/he can accurately determine whether filing bankruptcy will improve or worsen your financial situation.

3. DON'T FILE BANKRUPTCY IF YOU'RE TRYING TO GET RID OF STUDENT DEBT

Student loans are one of the few types of common debt that are usually not dischargeable in bankruptcy. If your student loans

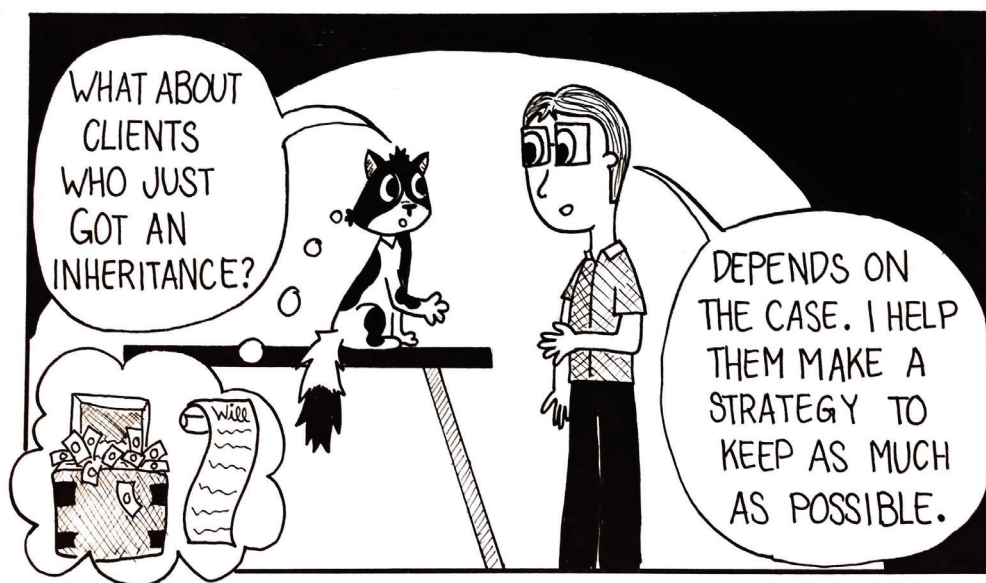
went to pay tuition, room & board, or school supplies, then that debt is probably not dischargeable in bankruptcy. However, in the rare case that you have loans that were for living expenses in excess of what it cost to attend school, then that amount may be dischargeable. This is another “grey” area where you should speak with your attorney and show her your student loan documents. The specific language on those loan documents is important. However, in general, most student loan debt is not dischargeable in bankruptcy because it covers just the cost of college attendance, not living expenses beyond that.



4. DON'T FILE BANKRUPTCY, OR WAIT TO FILE, IF YOU JUST RECEIVED AN INHERI- TANCE

Or, *if that inheritance puts your total assets significantly above \$28,000*, unless you're willing to have it be used by the Trustee to go toward paying off your debts. This is a "grey" area you should discuss with your attorney. Perhaps the amount of debt that will be discharged in bankruptcy is significantly greater than

the inheritance that will also go toward paying off your debts. Perhaps the peace of mind of no longer having creditors at your heels is worth losing what you've inherited. Alternatively, your attorney may counsel you to postpone bankruptcy for a few years, while you use up what you've inherited. A good bankruptcy attorney will examine the "big picture" of your financial condition and goals and recommend ways bankruptcy can further your goals and when.



5. DON'T PAY ANY UNSECURED CREDITOR MORE THAN \$600 IN THE 90 DAYS BEFORE FILING BANKRUPTCY

People filing bankruptcy typically have multiple unsecured creditors. These are creditors who have lent you money without your having pledged collateral. Credit card companies are the most common type of unsecured debt, while mortgages and car loans are the most common types of secured debt. In the case of credit cards, you have not given the issuing bank the right to take any of your property if you don't pay, unlike in the case of a mortgage where the mortgage company can take your house or the institution financing your car which can repossess it. Other common forms of unsecured debt are medical bills and other bills for profes-

sionals you've been unable to pay. *Paying one versus the other credit card is seen as "preferential" by the bankruptcy law.* Furthermore, the Trustee is legally entitled to take back any such payments from your creditors and reapportion them as he sees fit. So, stop paying all unsecured creditors 90 days before you plan to file bankruptcy. When they start calling, tell them you're about to file for bankruptcy or, better yet, have your attorney take those calls. You should continue to pay secured credits like your mortgage and car loans (see Do #2) and utilities (see Do #3).



6. DON'T LEAVE OUT ANY ASSETS OR TRY TO HIDE THEM

In a chapter 7 bankruptcy, everything you own and owe is legally transferred to a Bankruptcy Trustee, who can then use your assets to pay your debts. The Trustee is appointed by the Justice Department, is usually an attorney or an accountant, and is paid from the filing fees and (sometimes) commissions on the sales of assets sold. You are allowed to keep approximately \$28,000 of assets and cash in a chapter 7. Legal ownership of the assets is transferred back to you when the bankruptcy is completed. *It is against the law to hide or "forget" assets.* The Trustee can, and does, ask for bank statements and other financial documents that often give clues if there are assets someone is trying to keep hidden. If the

Trustee discovers assets that were not declared on the bankruptcy petition when it was filed, the Trustee may take the assets, at minimum. This means all the debts were discharged come back to life. Additionally, criminal charges are often filed for the fraud, and jail time is possible.



7. DON'T CASH OUT YOUR RETIREMENT ACCOUNTS



Sophie Schnietz 04/20

Bankruptcy law lets you keep your retirement accounts through bankruptcy (in most cases)! The retirement funds you have in 401k accounts are safe – no matter how much is in them. Yes, you read that correctly. However, the funds in IRAs accounts are treated a little differently. You are allowed to keep the first \$1.3 million in IRAs in most cases. Furthermore, the amounts in your retirement accounts (either 401k or IRA) do not count toward the means test (the income threshold above which you no longer qualify for a chapter 7 bankruptcy, but rather must file a chapter 13 bankruptcy, where you are put into a 5-year plan to repay your debts).



8. DON'T LEAVE OUT "WEIRD" ASSETS

Am I sounding like a broken record? **You must disclose all assets.** Here's some of the items the bankruptcy court views as assets that clients often overlook: royalties, accounts receivable, whole life insurance, vintage cars, patents, the private company that you own 1/15th of with college buddies, business tools &



equipment, the stamp collection you inherited from Auntie Hazel that you don't even like. If you are a professional photographer and fail to disclose the lenses you own, the Trustee may schedule a time to visit your studio and do the assessment of the value of your equipment himself. A good bankruptcy attorney will help you determine the value to claim on your bankruptcy petition (one that is both honest and signals to the Trustee that the asset is not worth selling). The asset & liability questionnaire you fill out for your attorney will guide you on what the bankruptcy court sees as assets. But, if you're uncertain, ask your attorney. Let her know about everything you own, so she can make the judgment call on whether failure to disclose that item could potentially jeopardize your bankruptcy.



9. DON'T USE CREDIT CARDS FOR 90 DAYS PRIOR TO FILING

This includes not using any credit cards for regular charges, cash advances or convenience checks. Why? The credit card issuer can sue you for non-dischargeability of the debt on their card, and win. *Card issuers will argue (correctly), that you knew you were going to file bankruptcy, knew you'd never repay them, and thus that the charges were fraudulent.*



10. DON'T LEAVE OUT FEDERAL & STATE TAX REFUNDS

Don't forget to include tax refunds if you know you're getting one. *It is money coming to you and thus is considered an asset by bankruptcy law.*

Notes:



11. DON'T TRANSFER REAL PROPERTY – EITHER TITLE OR DEED – TO ANYONE TWO YEARS PRIOR TO FILING BANKRUPTCY, UNLESS YOU GET A REASONABLE MARKET PRICE FOR IT

Let's say you have a parcel of land worth \$100,000. If you sell that land prior to filing bankruptcy for around \$100,000, then the Trustee will have no problem with this transaction. However, if you sell that land to a friend or a cousin, for an amount significantly below its market value – in this example, anything less than \$90,000 – the Trustee will claim this was a fraudulent transfer. Why? *It is seen as preferential: you took a bad price, impoverished yourself, and thereby have cheated creditors out of repayment that could have occurred if you'd gotten market price for the*

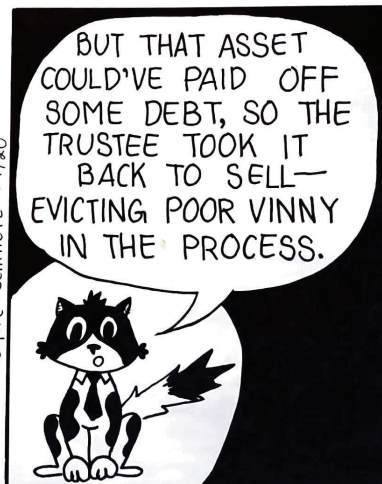
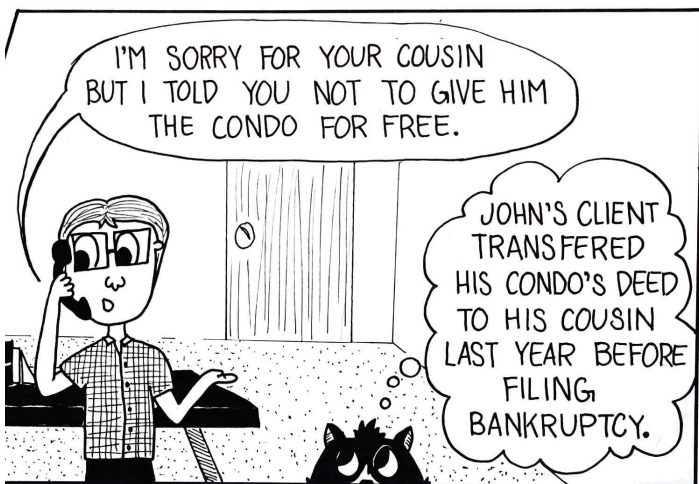
asset. The Trustee could have sold that land for something closer to \$100,000 and thereby repaid some/all of your creditors. You made all your other creditors worse off by selling to your shifty cousin Vinny for \$25,000. The Trustee will claim this was a preferential transfer to Vinny, take the land back from Vinny (with full legal authority to do so), and sell the land to someone willing to pay close to its actual value. Don't jeopardize your bankruptcy. And don't jeopardize future invitations to Thanksgiving dinner with your cousin Vinny.



12. DON'T OMIT LIVING EXPENSES TO HIDE THE FACT THAT YOU'RE LIVING WITH SOMEONE

Some people experiencing the financial stress that leads to bankruptcy live with someone else – a parent, sibling, romantic partner or friend. It's okay if someone else pays some of your living expenses. It's not something that should be hidden because the bankruptcy process requires you to disclose your full financial situation. This includes how your expenses are paid for. Bankruptcy

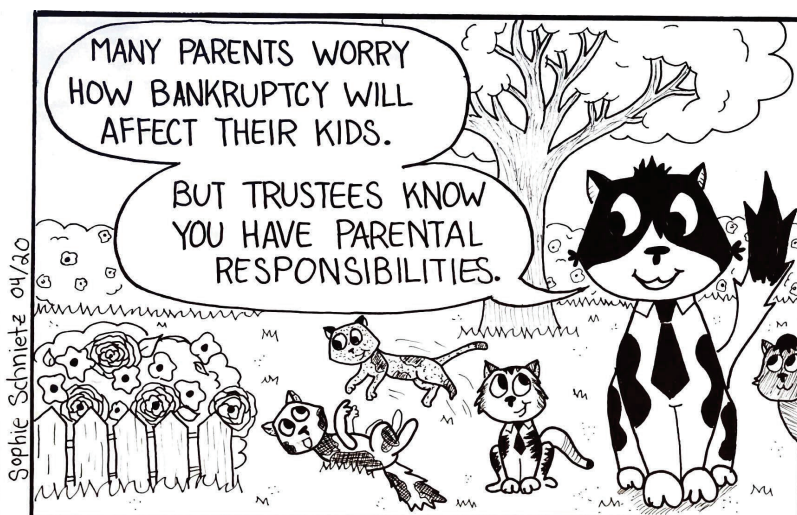
Trustees look at a “heads on the beds” formula to determine who is in a household, and all household income and expenses must be disclosed. But some family and romantic partners would prefer not to be involved in the bankruptcy process of their loved one. *Disclose the full details of your living situation and your romantic situation to your attorney so s/he can help you determine how to best navigate this potentially tricky issue.*



13. DON'T PUT ANY OF YOUR MONEY INTO YOUR CHILDREN'S ACCOUNTS IN AN ATTEMPT TO KEEP THAT MONEY AWAY FROM THE TRUSTEE

You cannot hide money from the Trustee by putting it into an account under your minor child's name, though many people try. The Trustee can and will look at any financial accounts belonging to minor children (using their social security numbers which are on your tax

returns and disclosed to the Trustee) for up to four years prior to filing bankruptcy. If you park \$25,000 in a savings account for your son in the year prior to filing bankruptcy, the Trustee will find it and claw it back. You can repay loans you took from a minor child, for up to two years prior to filing bankruptcy. You can also pay tuition for your child, or any other "fee for service". In other words, it is fine to continue to pay for your child's health, education and welfare. It is just not okay to "hide" your money in a child's account.



14. DON'T REPAY LOANS FROM FRIENDS OR FAMILY, OR GIVE THEM MORE THAN \$600 CASH OR PROPERTY, IN THE YEAR PRIOR TO FILING BANKRUPTCY

Friends and family members are considered “preferential” in bankruptcy law. That means *the law believes there is a likelihood you could benefit financially from repayments or transfers of money to friends and family*. How? Perhaps the value of your assets is close

to the \$28,000 maximum you are allowed to keep through bankruptcy, and you don't want the Trustee to cash out that investment account you have that will put the value of your assets over \$28,000 (and thus subject to liquidation by the Trustee to repay some of your debts). You transfer ownership of the account to your Uncle Fester to hold onto until after bankruptcy. But that's a fraudulent and preferential transfer. If discovered, not only will your bankruptcy be voided, but the Trustee will sue Uncle Fester and gain ownership of the investment account. Moreover, both you and Uncle Fester can be criminally prosecuted. Same goes for the transfer of any asset or property worth more than \$600 – things such as cars, computers, sports equipment, Grandma's jewelry.



15. DON'T OMIT A CREDIT CARD FROM YOUR BANKRUPTCY PETITION IN THE BELIEF IT WILL STILL BE AVAILABLE TO YOU POST-BANKRUPTCY

Many people hope to keep one credit card for emergencies, through bankruptcy. They deliberately fail to report that card on their bankruptcy petition. It's not worth it. All your credit cards will be cancelled post petition. When your bankruptcy is filed, your social security number is automatically sent to all credit agencies. This means *all your credit cards are alerted to your bankruptcy, whether you've included a card on your petition or not.* The standard practice among credit card issuers is to cancel all cards associated with a person who's filed bankruptcy. There is no way around this. But, in exchange for the in-

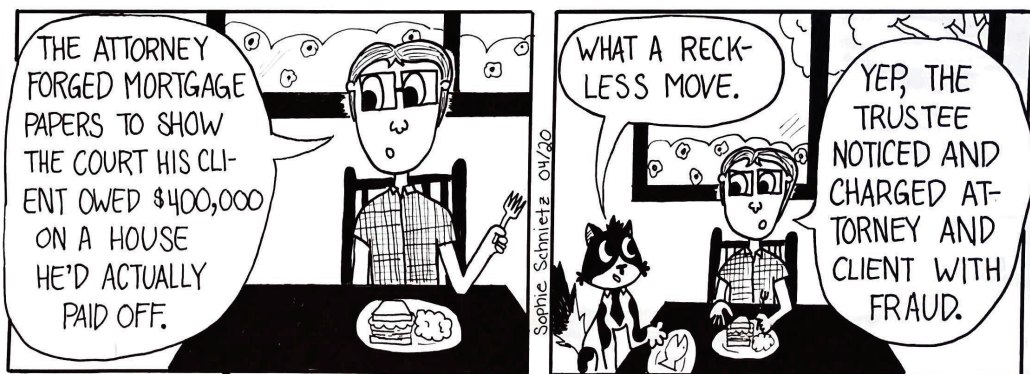
convenience of living within your means (no credit), you will have your debts wiped out. It's worth it. Moreover, most people filing bankruptcy begin receiving offers from credit card companies within 1-2 years of their bankruptcy discharge. Yes, your interest rate will be higher than if you hadn't filed bankruptcy but you will have hopefully moved beyond the circumstances that had you taking on so much debt to begin with.



16. DON'T HIRE FAUCHER LAW IF YOU WANT TO OMIT ASSETS OR CUT CORNERS

I only do bankruptcy cases by the book. I promise I will get you the best legal result possible, so that your discharge lasts and will not be overturned. There are plenty of bankruptcy attorneys and preparers out there that will ignore the requirements of bankruptcy law. I know. Many former clients of these “ethically slick” practitioners become my client after a short cut has thrown a wrench in their bankruptcy

proceeding. *If you want or need to hide assets, or pick and choose which elements of bankruptcy law to follow, then I'm not your guy.*



2945 Townsgate Road Ste 200, Westlake Village, CA 91362

JohnDFaucher.com (818) 889-8080

17. DON'T HIRE FAUCHER LAW IF YOU WOULD RATHER INTERACT WITH CLERKS AND PARALEGALS, THAN WITH AN ATTORNEY

If you've started to do any homework on bankruptcy firms, then you already know there's a huge number and variety of people and firms who prepare bankruptcy petitions. In fact, it's not even necessary to be an attorney to do so. Indeed, there are folks out there who act like they're an attorney even though they are not, and who will not tell you the truth unless you ask them directly. There are also bankruptcy attorneys who are highly visible until you've been signed up as a client, but then disappear and you end up dealing only with their paralegal for the duration of your bankruptcy proceeding. At

Faucher Law, I don't ghost clients. You will be interviewed about the specifics of your situation only by me, because only I have the expertise to discern whether there are minefields in, or creative ways to address, your situation. I have a great paralegal who enters all the information necessary for me to file your bankruptcy, but she doesn't have the legal and financial judgment and experience necessary to spot the red flags and creative alternatives that your situation may require. As a result, you will rarely speak with her. I go over every bankruptcy petition with my clients, and I attend every Trustee meeting with my clients, except in the unusual case that there's a scheduling conflict. Filing bankruptcy tends to be a stressful experience for most folks. *Don't compound an already-difficult*



Make sure you're choosing an experienced attorney who will actually be there with you during the entire process. Unless you really, really like clerks and paralegals, in which case you should avoid hiring me.

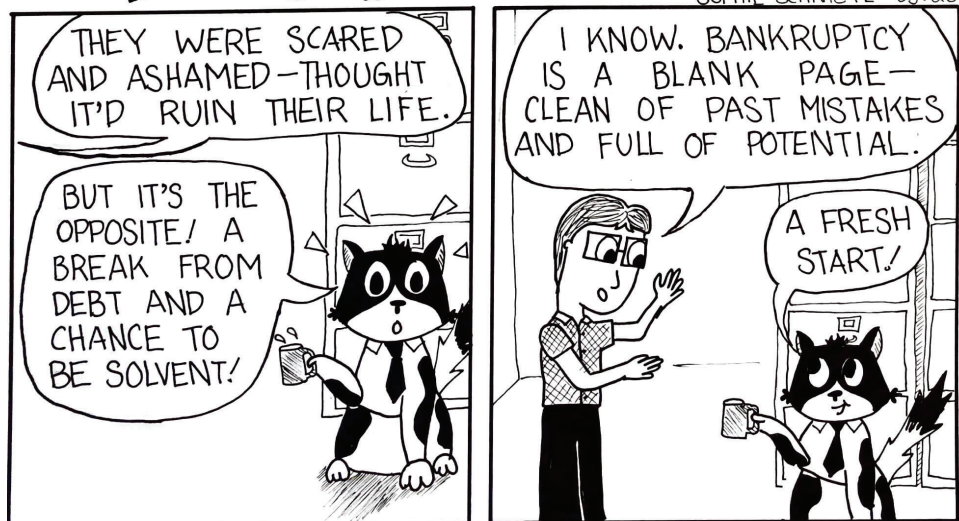
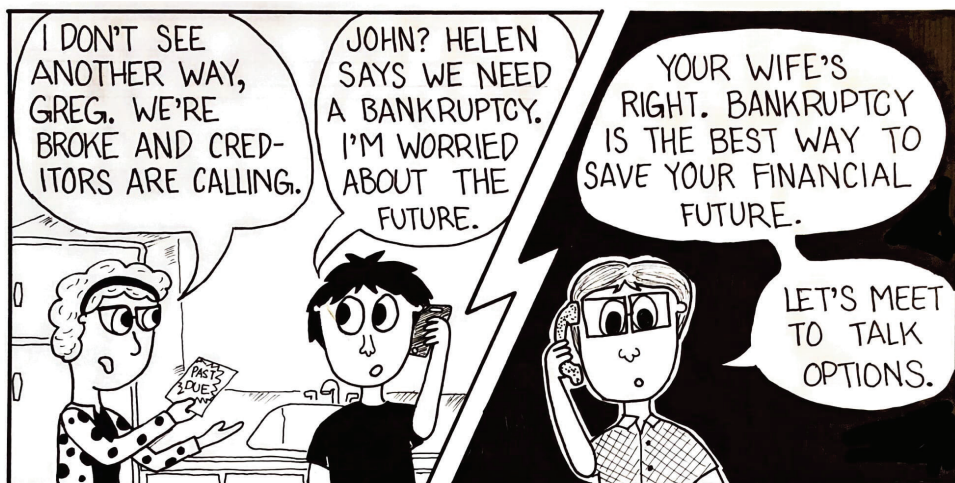
[illegible]

18. DON'T WORRY THAT FILING BANKRUPTCY WILL RUIN YOUR LIFE

For almost all of my clients, it's one of the best things they've ever done. They get out from under debts they cannot pay and gain the invaluable opportunity to start over again on fresh financial footing. Indeed, this is exactly what Congress envisioned when writing our bankruptcy laws. The ability to file bankruptcy (under many strict income and asset conditions – after all, chapter 7 bankruptcy is only available to people who have come very close to depleting most of their resources) is a substitute for the very generous social safety-nets available in most other advanced, industrialized countries. We don't have free healthcare, or years of unemployment benefits, or extensive voca-

tional retraining, or virtually-cost-free college tuition in the U.S., like so many other countries do. Instead, when U.S. citizens find themselves owing money than they cannot pay off, they can discharge crushing debt, and return to full and healthy participation our economy. There is no shame in this. That's what bankruptcy is there for. That's why our legislators established it. *Bankruptcy will do the opposite of ruining your life: it will allow you to restart your life.*





The Do's

1. DO FILE BANKRUPTCY TO GET RID OF TAX DEBT

Bankruptcy will allow you to get rid of most state and federal tax debt. There are a few exceptions to this, the most frequent being failure to file a timely tax return. For example, if you owe \$10,000 on 2015 tax debt, but didn't file your 2015 return, you can never discharge those taxes with bankruptcy. The government really, really wants you to file your tax returns. The most frequent exclusion for business owners is back payroll taxes, which cannot be discharged in bankruptcy (because this was employee's money that the employer kept rather than turning over to state or federal tax agencies as is required by law). How does

IT MAY FEEL LIKE THERE ARE A LOT OF THINGS YOU CAN'T DO IN BANKRUPTCY BUT HERE ARE SOME THINGS YOU CAN DO!

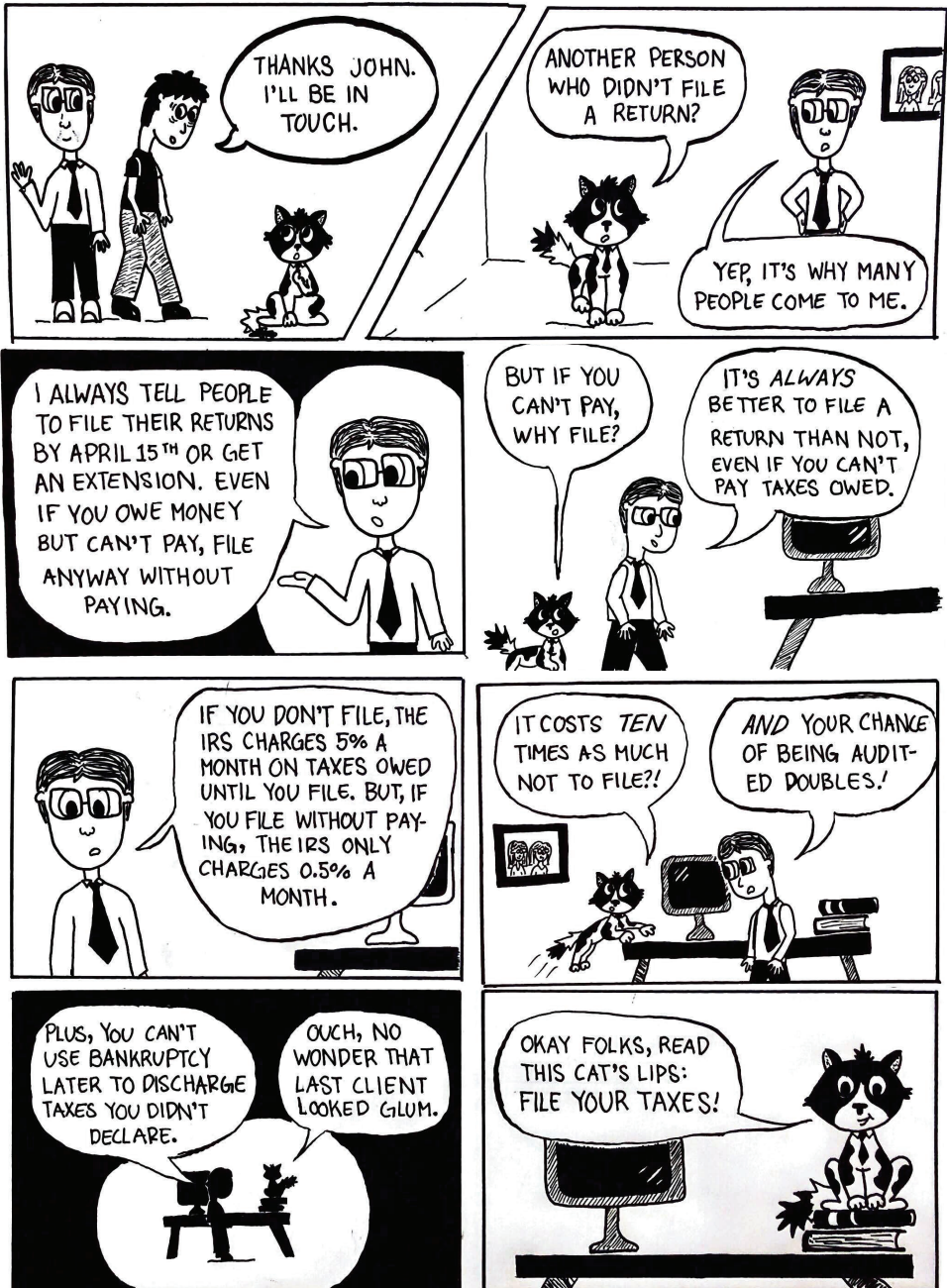


the IRS know what you owe if you haven't filed? They've either calculated it from the W2s or 1099s your employers filed with the IRS, or the IRS is making a guess. The IRS' guess, by the way, never includes deductions, so you are always coming out worse off than if you filed your own return. There are also some very picky and complicated timing issues that are waaaaay too boring go into here. Consult with your bankruptcy attorney, and make sure she knows both bankruptcy and tax law! *Many bank-*



ruptcy attorneys and preparers don't understand how and when taxes can

be discharged. Make sure yours isn't one of them if you have back taxes you owe.



2945 Townsgate Road Ste 200, Westlake Village, CA 91362

JohnD Faucher.com (818) 889-8080

2. DO INCLUDE INCOME FROM PART-TIME OR OCCASIONAL WORK

You must include all forms of income from the past three years on your bankruptcy petition, not just what you earned from your employment or a business. This includes regular payments from non-employers such as social security, disability, alimony, pension and insurance payments. It also includes occasional income such as from part-time work or one-time sources such as working at a Christmas tree Farm during December. The questionnaire you fill out for your attorney will guide you on possible forms of income.

3. DO CONTINUE REGULAR GIFTS TO CHARITY

If you regularly made charitable gifts prior to bankruptcy, the bankruptcy code allows you to continue doing so in bankruptcy, but only if there is a pattern of prior giving you can prove, such as cancelled checks to your church, temple or mosque.



4. DO PAY UTILITIES

Payments for regular, monthly services are not considered debt repayment, but rather fee for service.

Anything that is typically billed monthly is considered a bill, not a debt, by bankruptcy law, and thus can be paid without worrying that the bankruptcy Trustee will take back that money. So, pay your electric, cell phone, Internet service provider, and other monthly bills during bankruptcy to ensure you don't disrupt service.

Notes:



5. DO DISCLOSE ALL COMPANIES & PARTNERSHIPS YOU HAVE AN OWNERSHIP STAKE IN

You must name all companies, partnerships and limited liability concerns you have a full or part interest in, even if they have not thrown off any income or dividends in years. Bankruptcy law is quite clear: a person filing bankruptcy must disclose all assets. Even ones worth so little it seems silly to waste the time to list them (we routinely list pets on bankruptcy schedules and, no, no Bankruptcy Trustee has ever taken Fido or Fluffy and sold them to repay debts). The law wants the Bankruptcy Trustee, not the person filing bankruptcy, to determine whether an asset is worth so little it can be ignored (and pets are always ignored, as are the contents of your clothes

closet, your wedding ring, your household goods, appliances and furniture, and routine electronics such as your iPad, iPhone, tv and printers). In other words, what's as important as the value of an asset is the fact of its existence. And, if it exists, it must be disclosed. If the Bankruptcy Trustee finds out about your ownership stake in a company, s/he is likely to think you were trying to hide something. Then they may start looking for other things you're trying to hide. Don't risk looking dishonest and jeopardizing the discharge of your debts. Disclose all assets.



6. DO PAY SECURED CREDITORS IF YOU WANT TO KEEP THE ASSET

The most common forms of secured debt are home mortgages and car loans. They are “secured” by your house and car respectively. If you fail to pay, the lender can take them back, in lieu of payment. If you want to keep these assets, then you must remain current on the payments. Bankruptcy law allows such “preferential” treatment, unlike in the case of unsecured debt (see #10 Don’ts). *Mortgage and car loan lenders (and other secured debt holders) made contracts codifying their “preferential” status when you signed your mortgage and/or car loan document.*

7. DO SPEAK TO AN ATTORNEY ABOUT BANKRUPTCY SOONER RATHER THAN LATER

The financial triggers and circumstances that lead people to consider bankruptcy are stressful, emotional and often highly traumatic. As a result, lots of people avoid thinking about bankruptcy. *The vast majority of my clients wish they’d discussed how bankruptcy applies (or not) to their financial situation long before they actually spoke with me for the first time.* Almost all of them say they’d been in denial for a long time. If you’re reading this, there’s a reason for it. Please do yourself a favor and call a bankruptcy specialist now. It doesn’t have to be me, but call someone. You don’t need to do anything other than get good information on the alternatives for dealing with

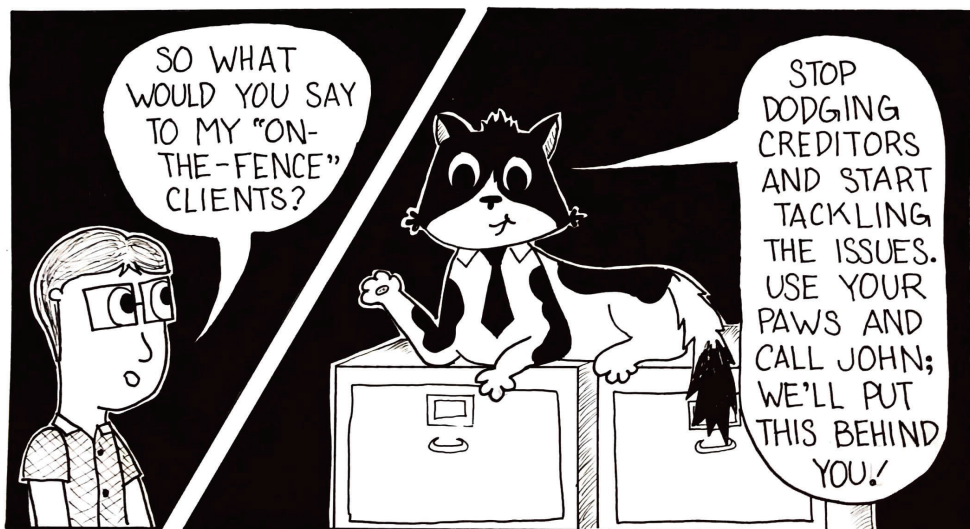
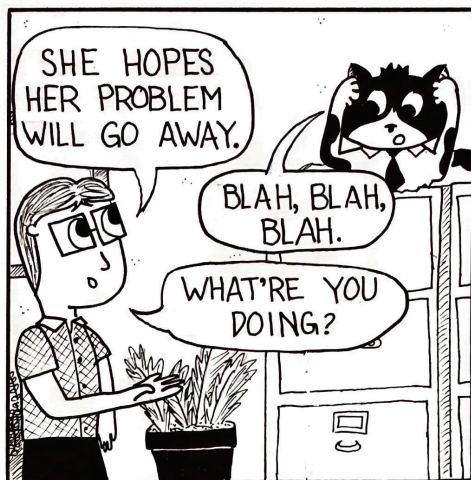


the financial circumstances that have caused you to be reading this. You don't need to make a hasty decision. You don't even need to make a decision. *Just educate yourself.* This is one of the main reasons I give away lots of information on bankruptcy for free. I believe decision-making is easier and better when people are informed. Please make yourself one promise right now: that you'll speak with someone this week who has bankruptcy experience and can apply it to your situation, to give you a sense of the feasible alternatives available to you. Even if you then need lots more time to make an actual decision, or take a step forward, you will feel lighter knowing what your alternatives look like. I promise. Oh, and my clients are the ones who have urged me to include this point. So, if you

don't want to listen to me, then take some advice from many people who've been in financial situations very similar to yours. Call me. Call someone. But just call.

Notes:







FAUCHER LAW
TAX & BANKRUPTCY

2945 Townsgate Road Ste 200, Westlake Village, CA 91362

JohnDFaucher.com

(818) 889-8080