

The Newsletter



FAUCHER LAW

TAX & BANKRUPTCY

Avoiding Asset Seizure by the Bankruptcy Trustee:

Chapter 7 Bankruptcy Planning

When it's time for pre-bankruptcy planning, my clients often go "Huh?" It's not obvious that filing a bankruptcy should involve timing and strategy, to minimize assets the Bankruptcy Trustee may take. Here's why pre-bankruptcy planning matters.

The Bankruptcy Trustee is a quasi-judge appointed to administer every Chapter 7 Bankruptcy. **When a bankruptcy petition is filed, legal ownership of all the debtor's debts and assets is transferred to a Trustee.** The debtor may keep either equity in a house or a "wildcard" exemption (discussed below) through bankruptcy, but any other assets can be used by the Trustee to pay off the debtor's creditors. If there are no assets the Trustee can use to pay off debts, then the debts are erased (or "discharged") by the bankruptcy; either the debtor's home equity or their wildcard assets are returned by the Trustee to the debtor at the bankruptcy's conclusion. **Pre-bankruptcy planning is key because a debtor doesn't want the Trustee to take assets when the Trustee has legal ownership of the debtor's estate.** Some debtors who meet the income thresholds for bankruptcy (under about \$100,000/year for a family, \$60,000 for an individual) also have deposit accounts or assets that aren't exempted from the Trustee. Pre-bankruptcy planning shifts or spends those assets so that the Trustee cannot claw them back when the bankruptcy petition is filed.

The Assets "Exempted" from the Trustee's Reach in California fall into two broad categories. **The Wildcard Exemption** allows debtors \$31,950 in assets (cars, deposit accounts, etc) they select. **The Homestead Exemption** allows debtors in coastal counties \$670,000 of equity in a primary residence. A debtor with more equity than this could not file bankruptcy without risking the Trustee selling their house to pay their debts. In addition to one of these exemptions, debtors are always allowed to take about \$5,000 in the resale

value of each car, as well as all of the money in 401k/403b retirement accounts and up to \$1.3 million in IRAs. Anything more is vulnerable to a Trustee selling that asset to pay debtors. Since it takes effort to sell some kinds of assets, Trustees often ignore hard-to-sell assets of relatively little value, such as a 20-year RV or a debtor's household goods and furnishings.

Pre-Paying Basic Living Expenses is the best way to spend down money in a checking or savings account, an asset that a Trustee can easily take to pay creditors. While a Trustee can legally claw back payments made by **the debtor to any creditor in the 3 months prior to bankruptcy filing, s/he is unlikely to take away a debtor's ability to live.** Thus making a few future car payments, rent/mortgage payments, health insurance premiums, or daycare payments allows the debtor to use their assets/account balances in ways that the Trustee will not challenge. I always counsel my clients on the timing of their bankruptcy filing to minimize the money sitting in deposit accounts.

Investments in Retirement Accounts is another good way to spend money in deposit accounts that the Trustee cannot claw back. **Debtors are allowed to keep all the money in 401k retirement accounts and up to \$1.3 million in IRAs.** Investments in 529 accounts are exempt only if made more than a year before the bankruptcy case, and then only in the amount of about \$6,500; if the account is more than 720 days old, the sky's the limit.

Waiting to file bankruptcy is good strategy for some debtors. **Many taxes can be discharged after they are three years old** (though payroll taxes can never be discharged in bankruptcy). And, in general, a Trustee can only claw back transfers of property and money that occurred less than four years before a bankruptcy is filed. It thus can make sense to sell or gift an unaffordable boat, then put up with hassling calls from creditors for a few years before filing. Since every debtor's asset portfolio is different, it's important that their bankruptcy attorney plan carefully how to get through bankruptcy with as many of their assets as possible.

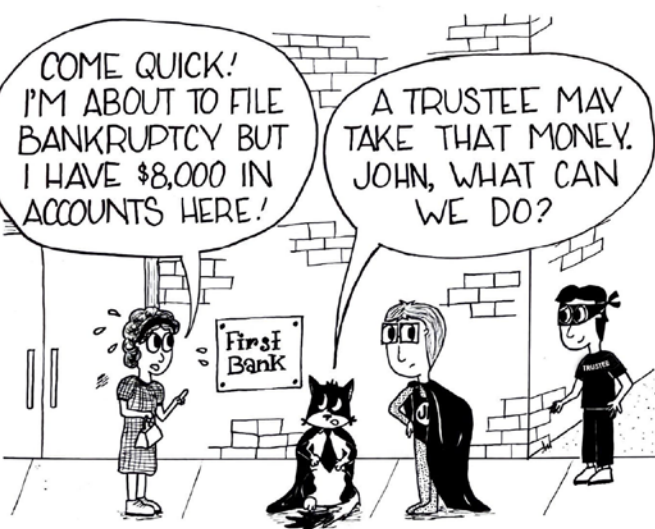
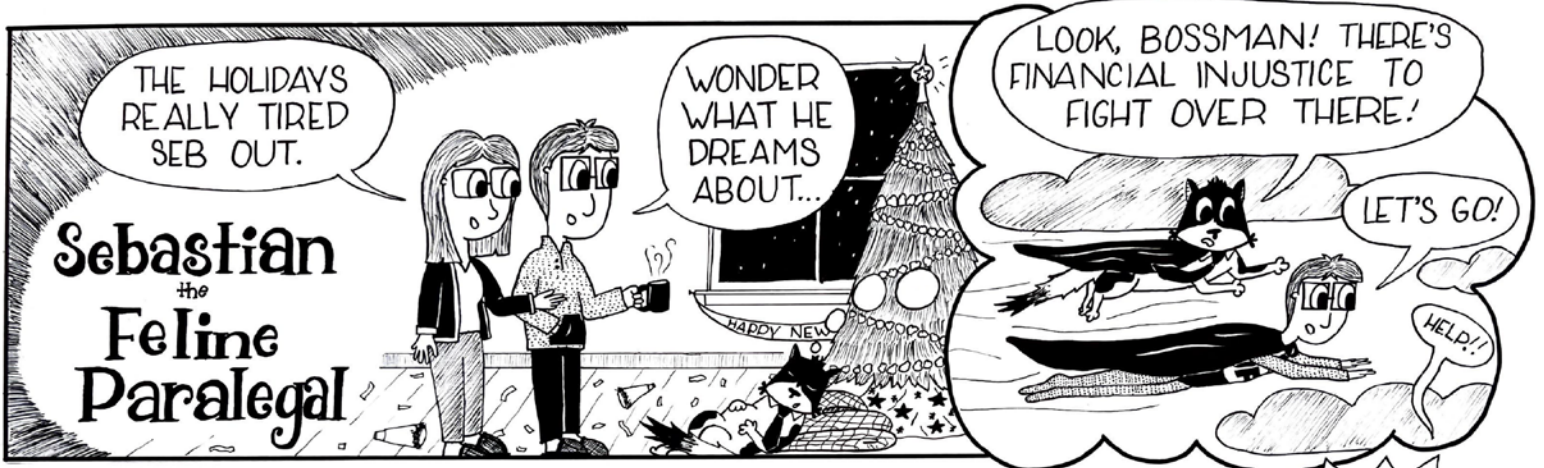
INSIDE STORIES

- John's Annual "Best Of" List!
- Creamy Wild Rice Chicken Soup Recipe
- Sebastian On Pre-Bankruptcy Planning

John's "Best of 2022" List

<p>Book</p>	<p>Fans of Andy Weir's <i>The Martian</i> are likely to enjoy <i>Project Hail Mary</i> even more; I know I did. The story features a fantastic, intergalactic bromance, tons of interesting science puzzles, and Rocky, my new, favorite alien who doesn't look anything like my imagining of a life form from another solar system. Very imaginative, well-written, thought-provoking.</p>
<p>Case Outcome</p>	<p>My clients were a family of three: mom, dad and their five-year-old son. The entrepreneurial dad's ventures had created \$150,000 of tax trouble. I advised waiting a year to file bankruptcy to discharge the tax debt. Then, horrible tragedy: the dad died unexpectedly. I advised the mom on how to best spend the life insurance proceeds and then filed a bankruptcy to get rid of the remaining debt. Today, her consulting website reflects a savvy businesswoman who overcomes adversity every day, and a healthy business.</p>
<p>Trip</p>	<p>Traveling for a buddy's 60th birthday for ocean fishing in Haida Gwaii (formerly Queen Charlotte Islands) in northwestern Canada, about 450 miles north of Vancouver. Spectacular scenery, including daily visits from deer and bear. I brought home 50+ pounds of halibut, salmon and ling cod that I personally caught. I felt a great sense of accomplishment.</p>
<p>Family Experience</p>	<p>Celebrating my younger daughter, Rose's, graduation from Rice University in December. It was delayed by a semester because of Covid, but she now has a degree in biology and a grant to spend two months spearing fish in Moorea (French Polynesia) that will become specimens for her research lab. Well done! She returns to Houston after her trip to continue work in the research lab while she figures out her graduate school plans.</p>
<p>Winery</p>	<p>Many of you know that Karen and I love wines from the Paso Robles region. Our new favorite is Paix Sur Terre, a tiny winery that has equally delicious reds and whites - unusual for the area because Paso is so strong on Rhone-style red blends.</p>
<p>TV Show</p>	<p>Occupied, a Norwegian show originally released in 2015 and now on Netflix (with subtitles but much of the dialogue is in English). The premise is the (relatively peaceful) occupation of Norway by Russia because the new environmental activist Prime Minister has stopped oil and gas production in the North Sea. The European Union supports the Russian occupation. Fascinating premise, and prescient given the Russian invasion of Ukraine this year and energy politics in Europe.</p>
<p>Intern Story</p>	<p>Please don't tell Sebastian, my Feline Paralegal, but my new favorite non-human office mate is Milo, the Intern (um, kitten) we adopted last year. Most days he spends many hours on my lap, as pictured. It's why I now wear an apron to work; it keeps fur off my clothes. Trouble is that I often forget to take the apron off for client calls on Zoom. Oops. Professionalism suffers when one hires feline interns.</p>
<p>Tea</p>	<p>A big shout-out to my friend Edie for turning me onto Pride of the Port, a malty and bold tea, readily available from Mighty Leaf.</p>





*NOT ACTUAL LEGAL ADVICE. CONSULT JOHN ON YOUR SPECIFIC SITUATION.

Creamy Wild Rice Chicken Soup

It's easy. It doesn't take long. And it's a super-tasty meal by itself or with a salad. What's not to love? Shout out to our daughter Rose for turning us on to this recipe. She and Sebastian really enjoy whipping it up together.

1 lbs boneless, skinless chicken breasts	1 ½ cups dry wild rice blend
6 carrots, sliced into 1/3 inch discs	3 celery stalks, sliced into 1/3 inch discs
2 medium/large shallots, diced finely	6 cups chicken broth
2 TBS chopped fresh thyme, or 2 tsp dried	1 TBS chopped fresh sage, or 1 tsp dried
½ tsp crushed red pepper flakes	2 cups fresh baby spinach or kale
2 TBS chopped fresh parsley	1 cup cream or whole milk
½ cup grated parmesan cheese	3 TBS butter

Instructions:

- In large soup pot, melt butter. Add carrots, celery, shallots and a pinch of salt & pepper. Cook over medium flame until fragrant and caramelized, about 5-7 minutes.
- Stir in broth, chicken breasts (leave whole), wild rice, thyme, sage, red pepper flakes & parsley. Bring to boil over high heat. Once boiling, cover pot and reduce heat to low. Cook 35-40 minutes, until rice is tender.
- Remove chicken breasts and shred or cut into bite-sized pieces. Return chicken to pot, add cream/milk, parmesan cheese and spinach. Cook over medium heat until through warmed. Add salt & pepper to taste.



Serves 6-8

WELCOME TO FAUCHER LAW

John D. Faucher worked for 10 years as an IRS trial attorney and has been in private practice since 2008. He and his team speak the legal language. They know the **tax and bankruptcy systems** and can help you get the best result. Have other legal issues? Call us. We'll find the lawyer who's right for you, your friends, or family.

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"You've been waiting all year for this...."

John's Annual "Best Of" List!



I'm sad to be taking down Christmas decorations, but happy about reflecting on the past year. This issue of **The Newsletter** contains my **Best of 2022** list. Many readers report reading the book or watching the tv show I pick annually! I think this makes me an Influencer, no? The Newsletter's main article focuses on **bankruptcy planning to minimize asset seizure** by the Bankruptcy Trustee. Sebastian the Feline Paralegal reinforces the message that **pre-paying basic monthly expenses** is a good way to bring down cash in accounts. And there's a **creamy wild rice chicken soup recipe** perfect for cold winter evenings.