



# BRADLEY COVEY

Bankruptcy Lawyer

A Member of the Springer Brown Covey Gaertner & Davis, LLC



## Bankruptcy Guide

### Bankruptcy Overview

The bankruptcy laws were designed by Congress to help people who are having trouble paying their debts on time. Filing bankruptcy will immediately stop all harassing telephone calls, lawsuits, wage garnishment, repossessions, and foreclosures. Filing bankruptcy stops the sleepless nights trying to decide how to make ends meet.

Nobody plans to get into debt so they can file bankruptcy. Bankruptcy is simply a safety valve, so that people who cannot pay their debts on time without undue hardship can get a fresh start and begin to rebuild their lives. This year over 1 million people will file bankruptcy, shed their debt and start fresh!

The bankruptcy code is divided into sections call chapters. The most common chapters are chapters 7 and Chapter 13. Generally, under Chapter 7, you're able to keep all of your possessions, including your house and cars, provided they are insured and you are current on your payments. Chapter 13 is available for people with steady incomes and is particularly useful for those who are behind on their mortgage payments that want to save their house. The major difference between Chapter 13 and Chapter 7 is that under Chapter 13 you are responsible for making some payments to your creditors, while under Chapter 7 you do not make any further payments to any of your creditors (except of course house and car payments).

**Remember, bankruptcy is not the failure but rather a fresh start and will give you greater control over your finances.**

# The Initial Consultation

## First and Foremost: We Listen!

The first and most important thing we do is listen. When you schedule your initial consultation with our office, you'll meet with an experienced attorney, not a secretary or paralegal. Our goal during our first meeting is to listen to your concerns and to get an overview of your financial situation. We want to understand the unique circumstances of *your* case.

By the end of our initial consultation, our goal is to come up with a plan. That may be filing a Chapter 7 bankruptcy ("straight bankruptcy"), a chapter 13 bankruptcy ("reorganization"), or not filing a bankruptcy at all. We don't "sell" bankruptcy. Instead, we try to find solutions to your unique needs.

## How To Prepare

To prepare for our initial meeting, please gather proof of your income from all sources (your recent pay stubs for 6 months, proof of social security, child support, etc.), your most recent tax return, and a completed Debt Listing Sheet (attached at the end of this Guide). We will get the rest of the information we need from you at the initial meeting.



Gather your documents



Meet with an experienced attorney



Develop a plan

## Your Consultation Is Free

There is no charge for your initial consultation. We understand that people with financial problems don't have money to waste.

*If we can't help you, we won't charge you. It's that simple.*

### *If we can help you*

If we recommend bankruptcy, either Chapter 7 or Chapter 13, and you accept our advice, we will give you some disclosures required by law, a fee agreement, and our client questionnaire to complete.

# The Client Questionnaire

**You will need to complete a Client Questionnaire.**

## **Completeness and Accuracy**

Having an accurate and complete client questionnaire is an absolute requirement for us to prepare your case.

At the heart of the case preparation process is a short client questionnaire. This questionnaire must be filled out completely and accurately.

## **Take Your Time**

We cannot stress this enough: We need to know the answers to the questions on the questionnaire. This is not something we just made up because we thought it would be good to know these things; the information is required by the bankruptcy code. Spend the time with the forms necessary to provide us with the information we need. It will save us both time and frustration. We cannot conduct the "Computer Interview" until the questionnaire is fully completed. Again, keep your goal in mind: your discharge. Also keep in mind that we did not invent these rules, but we must *both* play by them in order to reach your goal.

# Credit Counseling

## **Before Filing**

Prior to filing your case, you must complete a credit counseling briefing. You may do this in person, online, or by phone. There are several agencies approved by the United States Trustee's Office. Most charge about \$50 for the counseling (\$50 for a married couple if it's a joint filing). While you may use any approved agency for this counseling, you may want to consider:

Money Management International, telephone 877-918-2227, web <http://www.moneymanagement.org>

Debt Wise Foundation, telephone 888-332-5819, [www.debtorwise.org](http://www.debtorwise.org)

\* If you want to do your counseling online only, the cheapest is:

Before You File [ConsumerBankruptcyCounseling.info](http://ConsumerBankruptcyCounseling.info) and costs only \$5

After You File [Ypside.com](http://Ypside.com) and costs \$15

The counselor will ask you about your debt, your income, and your expenses. The counselor cannot stop you from filing bankruptcy. He's not the gatekeeper. You're simply required to give the information to the counselor and complete the session. Keep in mind that while this makes little sense, it's your ticket into the bankruptcy system.

# Documents

## **Proof of Income / Pay stubs**

We need proof of all the income in your household. We need your pay stubs for the last seven months. We also need your spouse's pay stubs even if they are not filing bankruptcy. We also need proof of any social security payments, pension benefits, unemployment benefits, child support, etc. All income for seven months, please.

## **Tax Returns**

Chapter 7: We need your last tax return you filed.

Chapter 13: We need the last four tax returns you filed. What is even better is tax transcripts. Call the IRS at 800-829-1040 and order the last four years tax transcripts. Transcripts are what the Trustee wants because they prove the returns were filed.

## **We Will Help You**

There may be other documents we require such as lawsuits, divorce papers, trusts, etc. We will work with you to help you assemble documents you may be having difficulty obtaining, and we will keep an ongoing list of what we have and what we still need to file your case. We will make this as painless as possible, but this stage in your case is critical to achieving our goal of getting your debts discharged.

## **If You Are Self-Employed**

If you are self-employed, you may not have pay stubs. Instead, you may take profit distributions or draws from your business. For us to calculate your CMI, we need to look at the same six-month period. However, since you have no pay stubs, we'll need a profit and loss statement for each of the six months. Please note that a year-to-date profit and loss statement *will not do*. We need profit and loss broken down by each month. We strongly prefer that you have an accountant assemble this information. Note, we cannot count "soft costs" like depreciation. We need income less actual expenses.

## **A Moving Target**

Calculating CMI is tricky, because the numbers change each month. We tell our clients it's like shooting a moving target. You must stay out in front of it. If you're filing date gets pushed back, you need to provide another month of pay stubs (or another profit and loss statement if you're self-employed). Your filing can be delayed for a variety of reasons. The most common is that you have not provided us with documents we need to file your case. We may also decide to delay filing to show a more realistic CMI figure or for a variety of other strategic reasons.

# Pre-bankruptcy Do's & Don'ts

## **Don't: Make Last Minute Charges**

The day you decide to file for bankruptcy protection, you should immediately stop adding to the debt. Don't charge anything. I've been told by clients that they were told by friends or relatives that they could go ahead and "take what's left" of the credit lines of their accounts before they filed bankruptcy.

What does this mean? It turns out they were talking about charging right up to their credit limit and then filing bankruptcy. This is wrong. First, it's fraudulent because they know when they're incurring the debt that they have no intention of paying it back.

Even if it weren't morally wrong (which it is), it is legally risky.

Under bankruptcy law, creditors can object to a particular debt being wiped away. The typical reason is fraud. When the creditor gets the notice that you filed, it takes a look at your account history. If it sees a bunch of charges right before filing, it will get suspicious.

That doesn't mean the creditor will automatically cause trouble. If the amounts were small and not for luxury goods, the creditor might not bother about it. But you shouldn't give the creditor any reason to be suspicious.

## **Do: Tell Your Lawyer Everything**

You don't want to be special in bankruptcy

Your goal is to have your case slide on through the system, with no red flags and no questions raised. That's why it's important that you tell us everything about our case. We don't want a client to have taken the advice of a wacky friend and made some last-minute charges before coming into see us and not letting us know about the charges. There are ways to plan around problems -- we just need to know that there may be a problem.

## **Do: Pay Something Toward Recent Charges**

For clients who have charged something large recently I suggest they make some payments to that creditor in the meantime. When the creditor looks at your account, it will look at the recent charges, but it will also look at the recent payments. If you make a large charge right before filing and then make no payments, it will look fraudulent. But if you let some time pass and you make a few payments after the last charges, it looks as if you are indeed trying to pay it back. Think of it as putting an extra quarter in the parking meter. It may not be necessary, but it's a small price to pay to avoid a larger expense down the line.

At the same time, you probably don't want to pay those other guys anything. You can probably safely stop paying on your unsecured credit cards. Except as described above, you'd be throwing money down the drain.

### **Do: Pay Your Basic Expenses -- And Your Lawyer**

You need whatever cash you have for basic needs

We've seen clients let rent go unpaid so that they could pay the persistent collector from Visa. You have to take care of your family first and that means keeping a roof over your head. Of course, you should continue to pay your regular monthly expenses, such as rent and utilities. You should also stay current on any car payments on cars you wish to keep.

Another good use of your money right now is to pay your lawyer. Once you've decided to file bankruptcy, you need legal help and that requires paying your attorney.

### **Don't Take a Loan or Withdrawal From Your Retirement Account**

Taking a loan or withdrawal from an exempt retirement account to pay bills is usually not advisable. You certainly should consult with an attorney prior to taking such a withdrawal or loan.

### **Don't: Show A "Preference" To One Creditor**

Another factor in paying creditors right before filing involves something called a preference. The court doesn't want you to play favorites and pay a chunk of money to some creditors and not pay the rest. The Trustee can reach back ninety days to recover money paid to general creditors and spread it out more evenly to all of your creditors. The Trustee can also reach back one year if the money was repaid to a relative or insider. So it is not a good idea to pay back your mom a large amount of money right before you file bankruptcy. You might be wondering how the Trustee will know if you paid someone back. It is because you have to tell them, You sign your bankruptcy papers under penalty of perjury. The worst thing you can do is lie.

### **Don't: Hide Assets**

Some people want to go too far with this and actually hide their assets. They'll ask if they should take all the money out of their bank accounts before they file. I ask what they're going to do with it. The answer is usually to stick it under the mattress or give it to their brother to hold for them.

Neither scenario will work. Either way, the money is still their property. They still have to list it on their petition.

### **Do: Carefully Consider How You Would Justify Selling Assets Before Filing**

Other people want to sell off their property right before filing. This can be appropriate, but you should be careful. It might make sense to liquidate some property that wouldn't be protected. You could sell something and then use the money to catch up on your basic expenses and pay your bankruptcy attorney.

A certain amount of pre-bankruptcy planning is allowed. But I can't say exactly how much would be allowed in your case. There is a saying in the bankruptcy community: "It isn't a problem until a pig becomes a hog."

The main rule is to disclose, disclose, disclose. First tell your lawyer everything about your case. Then, make sure everything is listed somewhere on your petition. The most trouble you can get into with a bankruptcy court is by hiding something.

**Do: Get Credit Counseling**

It's now required. There can be a long wait to get an appointment to see or talk to counselor. You don't want to be in the position of being ready to file and unable to do so because you haven't taken care of this.

**Don't: Transfer Property**

It is important for you to be aware that transferring title to property before declaring bankruptcy may not be an option. If you transfer property within four years before filing, and do not receive some equivalent value in return, the bankruptcy trustee will avoid the transfer and recover the property or money from the person to whom it was transferred.

This problem often arises when you transfer a title to a vehicle to a friend or relative and aren't paid for the vehicle or when you quit claim deed your interest in real estate without receiving some payment for your interest.

**Do: Keep paying on cars and houses you intend to keep**

You should continue making payments on all vehicles and real estate you wish to keep. Remember, you must keep these payments current, the property insured and sign a reaffirmation agreement in order to keep secured property.

**Do: Close all bank accounts in banks or credit unions to which you owe money**

If you owe a bank or credit union money and you have any accounts with them, you should close all of your accounts and get all your money out before your bankruptcy is filed. These institutions can freeze your accounts and take the money in them to pay for the debts you owe them.

**Do: Have a bank account open** You should have a bank account open at a bank that you do not owe money before your bankruptcy is filed. Although obtaining future credit is relatively easy after your bankruptcy, opening a bank account is extremely difficult.

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# Case Preparation

## Cross the T's and Dot the I's

Once we receive your information we use it to prepare a draft of your bankruptcy petition and schedules. This process varies from case to case, as well as from chapter 7 cases (“straight bankruptcy”) and 13 cases (“reorganization bankruptcy”). During this process, we will contact you if we need more information or clarification regarding the information you provided. For instance, a secretary may not understand a deduction on your pay stubs, or may have a question regarding something in your questionnaire. We will contact you for clarification so we are sure we fully understand what's going on with your finances. If you receive an e-mail or phone call from either me or my staff, be sure to respond promptly so we can continue preparing your case. Once your case is ready, you will be notified, and we will schedule a “signing appointment.” As discussed below, your signing appointment involves much more than just signing your bankruptcy paperwork.

## Signing Appointment

### A Final Review

Once we prepare a draft of your bankruptcy petition and schedules we will contact you to schedule a signing appointment. We estimate one to two hours for this process, and you'll meet with your attorney personally for the appointment, again not a paralegal or secretary. You might think that this will be a short appointment where you show up and quickly sign your bankruptcy documents after a brief review. Instead, this is a time for you to thoroughly review a fairly thick stack of documents we prepared. We will discuss all of the documents, one by one, as well as any necessary modifications needed before we file your case.

### Our Goal: Perfection

Our goal is to file your case and have everything perfect. To do this, we will spend time reviewing the documents and making necessary changes. We will also completely explain every document you will sign in plain English so you understand the process completely.



Complete review of your paperwork



Plain english explanation



Ready for signature and filing.

### Filing

Once we get your paperwork in proper form to be filed, will do so electronically through the courts ECF (“Electronic Case Filing system). The court will then issue a case number as well as assign trustee and 341 Hearing (“First Meeting of Creditors”) date to your case, so you'll know when you'll be scheduled for court.

Bradley Covey

Bankruptcy Guide

We are a debt relief agency and we help people file for bankruptcy under the U.S. Bankruptcy Code



# Automatic Stay

## Immediate Relief From Creditor Harassment

The automatic stay is an automatic injunction that halts most collection actions by creditors immediately upon filing a bankruptcy. Creditors can no longer attempt to collect debts by way of phone calls, letters, law suits, or garnishments. The stay goes into effect the moment the bankruptcy is filed and remains in effect until it is replaced by the discharge or is modified by a creditor.

## Section 362 of the Bankruptcy Code

The scope of the automatic stay is governed by [Section 362](#) of the United States Bankruptcy Code.



Automatic Stay stops all collection activity.

## Does Not Stop

Among other actions, the automatic stay does not stop the commencement or continuation of a proceeding for the establishment of paternity; an order for domestic support (child support or maintenance); matters concerning child custody or visitation; dissolution of marriage, except to the extent such proceeding seeks to determine the division of property.

# 341 Meeting

## (First Meeting of Creditors)

### Your One and Only Court Appearance

Your bankruptcy hearing is called the first meeting of creditors (“341 Hearing”). It’s called 341 hearing because section 341 of the bankruptcy code requires it. It is also called the “first meeting of creditors” although it is the only meeting (usually) and generally creditors do not show up. It will be held approximately 4 to 6 weeks after we file your case. There will be no judge at the hearing. Your bankruptcy Trustee will preside over the hearing. A bankruptcy trustee is usually an attorney appointed by the United States Trustee’s Office. In the collar counties of Chicago, there are four trustees per county. Our firm is very proud to have one of the four trustees in Kane County, Illinois and one of the four trustees in DuPage County, Illinois.

### ID Required

You will be asked to swear or affirm to tell the truth and will testify under penalty of perjury. The meeting will also be recorded. The trustee will verify your identity by reviewing your drivers license or other acceptable form of identification such as a passport. The trustee will also verify your social security number by reviewing your original social security card. ***Be sure to bring your photo identification and social security card to the hearing.*** If you do not bring acceptable photo identification and your social security card, the trustee cannot hold your hearing, and you will have to come back another day.



You will be under oath.



First Meeting Of Creditors with the Trustee



The U.S. Trustee’s Office is part of the Justice Department

### The Trustee

The trustee is under a duty to ask certain questions, but he or she will not treat you rudely. All the trustees in the Northern District of Illinois, Chicago Division, are professional, courteous, and sympathetic to those in need of debt relief. In fact, most of the trustees are attorneys who represent debtors in their practices. The trustee must do his/her job, but you will be treated with respect. You should always answer questions honestly. To do otherwise is perjury and bankruptcy fraud, which are both felonies.

## Sample Trustee Questions

1. Did you sign the petition, schedules, statement of financial affairs? Did you sign the Declaration of Electronic Filing your attorney is showing you at this time? Did you read the petition, schedules, statements, and related documents before you signed them? Did your attorney provide you with copies of all these documents prior to today?
2. Are you personally familiar with the information contained in the petition, schedules, statement of financial affairs? To the best of your knowledge, is the information contained in the petition, schedules, statement of financial affairs true and correct? Are there any changes you would like to make at this time to make these documents more accurate?
3. Are all of your assets listed on the schedules? Have you listed all of your creditors on the schedules?
4. Have you previously filed bankruptcy? If so, when and where?
5. Are you the beneficiary of any pending will or trust?
6. Have you repaid any relatives within the last twelve months? If so, who and how much?
7. Do you have a domestic support obligation? (This means child support or alimony). To whom? If you do have a support obligation, it should have been listed on your schedules.
8. Have you read the bankruptcy information sheet provided by the United States trustee? Do you have any questions about what you read?
9. Have you made any transfers of any property or giving gifts of any property worth more than \$600 in the last four years? If yes: what did you transfer? To whom was a transfer? What did you receive in exchange? What did you do with the funds you receive?
10. Do you own or have any interest whatsoever in any real estate?
11. If so, when did you purchase the property? How much did the property cost? How much do you owe on the property? What do you estimate to be the present value of the property? Do you intend to reaffirm and keep the property?
12. How did you arrive at that value? If renting: have you ever owned the property in which you live and/or is it owner in any way related to you?
13. Does anyone hold property belonging to you? If yes, who holds the property and what is it? What is its value?

There are other questions that may be asked, but any additional questions depend on the individual facts of your case. Don't be nervous. I recommend that you arrive at your hearing about thirty minutes early so we can review your case together prior to meeting with the trustee.

# Chapter 13 “Confirmation” Hearing

## **Generally**

If you file a Chapter 13 case, the court will schedule your first meeting of creditors as with any other type of case, as well as a hearing call a “confirmation hearing.” Usually, you do not need to attend the confirmation hearing.

To confirm your case, the court will need to find that your plan has been proposed in good faith, that you have proposed to pay all your disposable monthly income to the trustee for the necessary period of time (parentheses 3 to 5 years, depending on the case), that your plan provides appropriate treatment for secured creditors, that priority debts will be paid in full, that all tax returns to have been filed, as well as many other factors.

## **Objections Are Routine**

You may receive in the mail an objection to your chapter 13 plan. Don’t panic. Objections are routine and are the vehicle by which the creditors let us know exactly how much you owe them and if there are any arrearages (back payments) that need to be paid through your plan. The creditor is required to send you a copy of the objection as well as your attorney. So, if you receive an objection we have already received it as well. You are welcome to call us to discuss any objections you receive and we will explain what it means.

# Almost Done

## 60 Days After Your 341 Meeting

The bankruptcy code gives creditors 60 days from your 341 meeting to object to your discharge or to ask the court to deny you the ability to discharge a particular debt. Creditors rarely take such extraordinary steps unless there is fraud involved (for example, if you lie about your income or intentionally ran up a credit card shortly before filing bankruptcy). In addition, the United States Trustee's Office, a division of the Department of Justice, also has 60 days to file a motion to dismiss your chapter 7 case for abuse.

Usually, this is only done if the United States Trustee believes you have enough income to fund a chapter 13 plan with monthly payments, and repay your creditors at least some of what you owe them. If the United States Trustee can show that you have the ability to make chapter 13 payments, the court may agree to dismiss your case. At that point you would have the option of allowing the case to be dismissed, or converting the case to chapter 13 and making payments to a 13 trustee for 3 to 5 years.

## Totality of Circumstances

All chapter 7 cases are subject to dismissal for abuse based on the totality of circumstances of your case. Our goal as your attorneys is to help you select the appropriate chapter for your case. If you have the means to pay back your creditors, we will recommend a Chapter 13. If you don't, we will generally recommend a Chapter 7. Once the 60-day period runs, you are eligible to receive your discharge (the court order saying you no longer owe your debts) if you filed a chapter 7. If you filed a Chapter 13, you'll still need to complete your plan payments over a 3 to 5 year period, before you will be eligible to for a bankruptcy discharge.

**After the 60 days has gone by and there are no objections, you will receive your discharge.**



60 days after your 341 meeting you will receive your discharge



On the road to financial freedom

## CONGRATULATIONS ON YOUR FRESH START!

You're now on the road to rebuilding your financial life!

# Communicating With Our Office

## Communication Is Key

From time to time, we will need to get in touch with each other. Make sure to update us on any changes of physical address, e-mail address, and phone numbers.

We try to return all phone calls within one business day, and generally can return any outstanding phone calls prior to going home on the same day we received a call. If you call, leave a detailed message of why you're calling. If it's something you believe a staff member can assist you with, discuss your question with our staff. We have a wonderful staff and most have been with us for years. If your question involves a legal question, then of course you need to speak with one of our attorneys.

It's critically important that you respond for questions or requests for information. If you receive something from our office, don't ignore it!



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Call us at 630.879.9559



Schedule an appointment at  
your convenience.

## Batavia For Personal Bankruptcy

Personal bankruptcy cases are usually handled by our Batavia Office. We will be glad to meet with you at any of our offices, but for communication purposes please use our Batavia phone and address for communicating with us.