3 Pre-Bankruptcy Planning and Asset Protection

Now that you have been through credit counseling, have looked into second mortgages, have looked into pawning your children—just kidding—you have decided that your best option is to file for bankruptcy. We see in the next chapter how to choose your particular method of filing—Chapter 7, Chapter 11, or Chapter 13, but for now we consider what you can do to strategically prepare for the process.

There are basically two kinds of debt: secured and unsecured. Secured debt is credit that has been extended to you on the basis of the value of the property purchased.

A nonpurchase money-secured debt is one on which you have borrowed money and put up other collateral, such as a paid-off car, as security to ensure repayment of the debt. A creditor holding a security interest in your property has the right to take the property in the event that you default on your payments. Often, if the property is no longer of sufficient value to cover the debt, you will be personally sued for the deficiency. In bankruptcy, you can discharge the deficiency, but the property itself will go to the creditor, unless you redeem it (pay an often reduced amount to own it outright) or reaffirm the debt (agree to pay for it over time, but often at a reduced interest rate and with a reduced balance).

Unsecured debt is credit that has been extended to you only on your promise to repay it. Most unsecured debt is credit card debt, although, for example, in the case of a new car, the minute you drive it

off the lot the value of the car drops significantly, therefore, a portion of the new car loan becomes unsecured. A creditor with unsecured debt balances has no recourse other than to sue you for default and obtain a judgment against you, thereby becoming a judgment creditor with the ability to force the sale of your assets, place a lien on your house, force you to show up for a debtor's examination where he can question you as to the whereabouts of your assets, attach your business, your bank accounts, garnish your wages, and generally wreak havoc on your financial life in order to collect on the balance owed him.

Doesn't this sound like fun? You know you can't pay all or most of these debts. You are no longer in denial. You have sought help and, at this point, you have most likely done all you can to change your circumstances. You have gone to counseling and have pared down your standard of living as much as possible without having to pawn your underwear. So now, you are planning to file bankruptcy and you want to do all that you can to get prepared. You might still have some possessions with value that you want to retain, if possible. You know that creditors will want to get their hands on anything you have that is worth anything. If you file for a liquidation bankruptcy, you are going to lose anything that can be sold to pay off your creditors. So what can you do to prepare?

PREPARING FOR BANKRUPTCY

The first thing you do *not* want to do is to hide assets like jewelry and other valuables. Don't "give them away to your sister" for safekeeping. Don't transfer any assets that can be transferred back to you after the completion of your case. When you sign the papers that will be used to support your bankruptcy filing, you will be making an oath that everything that you have listed is a *truthful* listing of your property. When you are in the court proceeding, you will be under oath that what you are saying is true. Aside from how you should feel about it, courts do not like it when people lie to them. You may not get caught, but you just might. *It is not worth it.*

In any bankruptcy, even a complete Chapter 7 liquidation, you will not be expected to give up *everything* you own. There are certain exemptions, property that is not in the parameters of what can be taken to satisfy your creditors. The types and amounts of exemptions vary

from state to state, but they are intended for you to maintain enough to be able to have a fresh start. Bankruptcy law is not set up to be completely heartless. The trustee is not going to sell your child's special blanket or your sentimental photograph albums. The trustee is looking for things of a certain value that can be liquidated to offset what you owe so that your remaining debt can be legally and forever wiped out.

Another thing you do *not* want to do is charge many items on your credit cards right before you file with the knowledge that you are going to try to have that debt wiped out. Even though it may not seem so, it is essentially theft. Everything you do in the year prior to your filing and especially within the previous 90 days to your filing is going to be scrutinized closely by the court. Avoid the temptation to have that last little shopping spree.

TAKE INVENTORY

One of the things you might want to do before taking direct steps toward filing is to take an inventory of your belongings. You don't need to know every little thing, because if you are like most of us and are a true reflection of the product of your consumer debt, you probably have too many odds and ends to enumerate. What you want to do is inventory anything that appears to have value. You will not want to think in terms of replacement value but of what it could bring in an auction, yard sale, or through a liquidator. You can bring in some experts for estimates but be aware that appraisals may cost money.

What you will find, if you haven't already tried to liquidate certain items to pay bills, is that most personal property will never bring close to what you paid for it. Even at auction, the buyers are looking for bargains and will likely get them. If, however, you have many things of tangible value, you will want to consider selling them before you file so that you can use this money to reduce your bankruptcy estate. There may be debts that are secured and therefore not dischargeable in bankruptcy. You are going to be stuck paying them no matter what. These debts include the mortgage, the IRS, and other collateralized loans.

If these are debts that you are going to have to keep or ones that you hope to reaffirm, such as a car or the house, you can pay the value of your liquidated assets toward what you owe on those items.

This is better than having the trustee liquidate all of your assets of any value to pay off debts that will be wiped out in the bankruptcy. You are in dire straights. You have to do everything you can to keep yourself afloat. Although you might feel a great deal of guilt over not being able to pay your creditors, get over it. You are now in survival mode. Defer your guilt to a time when you can afford it.

EXEMPTIONS TO PRE-BANKRUPTCY PLANNING

There are some exemptions that are relevant to your pre-bankruptcy planning. While you can't legally squirrel away your valuables, you can sell certain items and use the funds to pay down some of the value of your exempt property. One of the most common forms of pre-bankruptcy planning is to use liquid assets, meaning things you can sell, to pay toward the equity of a home.

If your state has a liberal homestead exemption, it will be very helpful to you to pay down the equity. Each state is going to give you a dollar amount that you are able to keep out of the equity of your home so you can have something from which to build your new life.

Equity is defined as the difference between what your property is worth and what you owe on it. The worth of your property will be determine by such factors as appraised value and what someone would pay for it in the current market.

More specifically, equity is the difference between what your property is currently worth, that is, what it would sell for in the market today, often referred to as its "fair market value," and what you owe on it, if anything. For example, if houses like yours in your neighborhood are currently selling for $150,000 and your mortgage balance is $75,000, your equity in your home is $75,000. Likewise, if your automobile would bring $10,000 if you put it in the local *Car Trader* and sold it and the outstanding balance on your auto loan is $8,000, then your equity is $2,000.

If or when enacted, the bankruptcy reform legislation will set a federal limit on the maximum that each state can grant under their individual homestead exemption law—the figure currently proposed is $125,000. At the time of this writing, the states vary significantly in the protection afforded homeowners: In five states, the homestead exemption is virtually unlimited. A current bankruptcy legend has it that a certain Enron executive moved to Florida (where all of the

equity in his home would be "sheltered") to build a multimillion dollar home so that he could keep his ill-gotten gains.

At least at this time, Florida is a debtor's haven because you can buy an expensive home there and have all of the equity protected. If this executive goes through a liquidation bankruptcy he can keep the house. If anyone wants to get at it, they can't. You can see why creditors, particularly credit card companies, might want to have a cap on the homestead exemption.

In states such as Alabama, only the first $5,000 of equity in your home is sheltered. So, if you are a wealthy debtor who wants to avoid losing everything, your pre-bankruptcy planning could include a move to Florida or Texas, another debtor's haven. You would then buy a lovely and expensive home and liquidate all of your nonexempt assets and property, which typically means anything of value that can be sold to satisfy your debts and pay toward your home equity. You can always replace your things, which will likely be liquidated in a bankruptcy, but you would not be able to replace their value that is now tied up in your lavish home.

If you plan ahead, you can protect your assets while sitting comfortably by the ocean or your swimming pool. You may need to find other ways to shelter your income should the proposed reform become law, but someone will always be crafty enough to figure something out. Who knows what creative ways debtors will find to strategically and legally plan to maintain the maximum amount of their assets in the wake of bankruptcy?

LEGALLY SHELTERING ASSETS

When you plan ahead by sheltering your liquid assets within your home equity, you are maintaining as much of the value of your personal property as possible. The good news is that much of your property can't be taken either to satisfy a judgment or to pay creditors in a bankruptcy filing.

There are many things you can do that are perfectly legitimate that can maximize the status of your financial life when you finish the process of bankruptcy. You need to be creative and you need to know what is available. Not everyone is going to buy a big expensive house in a place with unlimited homestead exemption. Obviously, if you can do that, you are probably not going to be relying on this book

because you will have at least 10 lawyers and accountants advising you at every turn. What is interesting for the rest of us is that this strategy is available in each state and for each person according to the limit of the home exemption. We have listed the exemptions as they exist currently from state to state at the end of this book.

Some states only allow an exemption of $5,000 for your home. This means that according to the state's homestead exemption, up to $5,000 of your home cannot be taken to pay creditors in your bankruptcy filing.

Here's another warning about being honest. You can do many things to prepare for bankruptcy in the year or even months prior to filing. Keep in mind, however, that everything you do that previous year is going to be scrutinized. If you suddenly start doing things that are completely out of character, you will raise many red flags. If you do anything that can be found to be a purposeful effort on your part to perpetuate fraud against any of your creditors, you can get into big trouble. If anything is found to be tainted, your entire filing could be reversed. Your trustee can disallow anything that doesn't appear to be above board.

So, if something smells bad even though you may not readily know why, it is not worth the risk. You want the full benefit of what bankruptcy protection allows. You have major debt hanging over your head and you want to be free of it. Your possessions, while significant to you, are not worth the repercussions of fraud.

By the way, you can't just decide to pay off some debts right before filing for bankruptcy. If you pay off certain bills in their entirety, such as your friend the doctor, while not paying anything to other creditors right before filing, it is called *preferential treatment.* Other creditors can say "That is not fair. You treated him better than me." This kind of transaction will very likely be disallowed and your other transactions scrutinized under a microscope.

Here are some things that are perfectly legitimate to do in preparation for your bankruptcy filing:

- You can use your liquid assets, the things you can sell, to pay off debts such as taxes. In fact, the bankruptcy people and the IRS confer all of the time.
- You can pay down your mortgage in those states with unlimited or significantly large homestead exemptions.
- You can take a cash advance on a credit card to pay your living expenses or your attorney if its more than 60 days prior to filing or

less than 60 days if it is under the amount of $1075. There is probably a reason for that very specific amount but we just don't know what it is. If and when the bankruptcy reform is enacted, this will be changed to 90 days and $750.

- You can pay off credit cards having small balances so that you can keep at least one credit card for emergencies. It is most likely that a major credit card company will cancel your card anyway.
- You can liquidate nonexempt items such as a boat if you are behind in your mortgage and want to reinstate it.
- You can make your annual contribution to your IRA if you have one, or if you have any other exempt pension plans. Now you see why IRAs are good things to have.

  An exempt pension plan is one covered by the federal ERISA laws, or if not, it is one that is covered by your state's exemption list or the federal nonbankruptcy exemption list. You will have to check with your plan administrator or an attorney to find out about this.
- You can take out life insurance. Now don't get any ideas. The courts will look closely if your spouse is taking it out on you or vice versa and one of you mysteriously disappears. In this case, of course, you will have more problems than bankruptcy to contend with.

SMOOTHING YOUR OWN PATH

When you know that you are going to apply for bankruptcy, you may not have the motivation to scramble every month to make payments on your bills. If you have a car, and you owe more than you own, you might want to simply anticipate what will happen and hand it back to your car finance company. Why wait for the repo man? You can legally own a vehicle with a book value below the amount of exemption. It may not be the style to which you were accustomed, but if it does not insult your sensibilities, it will be a debt you do not have to reinstate and you can wipe it out altogether.

If you have a car repossessed, you still essentially owe the remainder of the purchase contract. This is why the car company has an interest in the car. If you default, they get the car back just like in the situation of the house. If you do not want to keep paying on the car, your remaining debt will be wiped out in the bankruptcy

procedure. This is presuming that you are filing for a complete liquidation.

For example, one couple, we'll call them Fred and Ethel, got married and didn't plan how they were going to manage money as a team. They both had been self-supporting and had never had to be concerned about someone else's spending. One of the first things they did when they got married was get his and her dream cars. They looked at the individual payments per month and said, "Oh, that doesn't seem so bad." But they had no thought about future planning or unexpected financial emergencies.

What is worse is that Ethel had a perfectly nice older car, that wasn't as cool as the beautiful SUV she eyed covetously, but it hardly had a mud stain on the rug. Fred and Ethel were in love and they had cars in their eyes. They got a pretty good deal on the first car, a beautiful black muscle car for him. Then they bought the SUV by trading in her car. The negotiations went well and they bought the car and were happy until they realized how much they lost in the deal by trading in a car that had "upside down" equity. They wound up owing far more than they expected because of their impatience and financial ignorance. "It seemed like such a good idea at the time," they lamented as they turned in the keys.

What happened is that their separate businesses—they were both self-employed—had taken a nosedive that particular year. In addition, they were essentially the blind leading the blind. They did not plan. When they had money, they would spend it, and when they didn't, they wouldn't. They had plenty of credit and were on an endless honeymoon.

When the bottom dropped out, they were both relieved to simply hand in the cars. They decided they would be satisfied with simpler cars in the future or at least wait until they had a more steady income and a long-range plan for their spending before they would ever consider another fancy car.

So what happens if you lose your cars? They did some pre-bankruptcy planning. Within the year before filing, they bought two modest cars in cash that were both below the value of the allowable exemption for a car. They were able to keep the two modest "junkers" for basic transportation and were given a reprieve until they could get back into shape to see what they wanted to do. They actually grew to love their used cars. They took better care of them than they had their fancier cars because they were so

happy to have something to drive that wasn't going to give them daily anxiety.

Here's another story: George was living under a mountain of debt for years and had had enough. He was a nervous wreck and could not get ahead. He had wealthy parents, had never learned to manage money, and had always used credit to extend his means to have the lifestyle he wanted. Each year George's parents gave him a gift of $10,000. This was the maximum gift that a person could give to another tax free. (Now the amount is $11,000.) In addition, the gift has the ultimate effect of reducing the estate of the gift giver.

George was so tired of the pressure of debt that he became a minimalist. He liquidated most of his property, found an affordable apartment instead of the house he had been living in, and decided to free himself of his debt altogether. Even though he waited anxiously for his annual gift, which he had been using to stave off creditors, George decided to give his $10,000 to the bankruptcy trustee and received a complete Chapter 7 discharge. He walked away debt free and from that time forward could rebuild his lifestyle and use his annual gift however he wanted.

Even though George still welcomed his annual gift, he felt better about himself. He had always felt anxious and inadequate because he was never getting ahead and had even had to ask his parents for additional help beyond what they were already giving him. Many times, the inability to manage money is a direct result of living beyond your means with constant subsidy from prosperous parents. It is not uncommon in this generation for many adults to receive funds for essentials from well-meaning parents who want to help their adult children maintain the lifestyle of their youth.

The economy and cost of living differs greatly today as compared to previous generations and there is far more reliance on credit than ever before. Bankruptcy was not nearly as common 20 or 30 years ago as it is today. There are far more goods and services to buy today than ever. In this situation, George was not only freed from debt, he was freed from financial dependence. He learned the hard lesson of living within his means. Even though George was an adult in his thirties, he had never known exactly what he had available and how much he would need to spend each month to maintain a reasonable lifestyle. George was much happier living on a cash basis.

WHAT CAN YOU KEEP?

Now that you know some strategies to use when getting ready to file bankruptcy, you will need to look carefully at the inventory we discussed at the beginning of this chapter to see what you can sell or what you simply can't bear to part with. Once you do this, you can determine how you want to go about your pre-bankruptcy planning. You have to look at whether you can keep the possessions you wish in the bankruptcy or if you are going to face losing them.

Before you file bankruptcy, you want to make sure that the things you really want aren't vulnerable to being taken away by your creditors. You have to look at the kinds of debt that you have to see what things are at risk.

The more you are behind in your payments on things, the more you are going to be harassed by creditors. If you haven't filed for bankruptcy and haven't heard anything from creditors for a while, don't be fooled. They could be lurking, waiting to get you when you least expect it. But you are going to be prepared. You are not going to wait so long with your hands over your eyes that your creditors are able to obtain judgments against you. You don't want creditors to gain control of you before you have a chance to be in relative control of yourself.

A *judgment* is a court order that says that you have to pay a certain amount to a creditor. This order has the authority of law behind it because a judge's approval gives the judgment holder the right to collect the amount from you. Once there is a judgment, there is no way for you to contest or argue against the amount owed. You need to pay attention to what is being sent to you in the mail. When finances are in disrepair, it is not unusual to throw bills into a big box or wastebasket and ignore them. It is easy to say, "I can't pay it so why bother." You want to maintain what leverage you have. You don't want other people, particularly creditors, to have too much power over you if it can be avoided.

A creditor obtains a judgment by suing you in court. If you show up at the hearing that will be held in civil court in the area where you are being sued, you can't get on the witness stand and simply say, "I can't pay it." You will need to prove either that you do not owe it or you will have to show that you have circumstances that would excuse you from paying it. When you go to court in a case like this, you can sometimes work something out with the creditor to make payments or to pay what you can. Your goal is to try to

avoid allowing the creditor to get a judgment because then you are responsible for the full amount and judgments are not dischargeable in bankruptcy. Judgments are considered to have already been through the process of law.

Another way you can handle it is to not show up at your hearing at all. This happens often. In fact, the creditors count on this. They can pay their lawyers less and it is clean and easy to set the collection wheels in motion. If you don't show up, the court will issue an automatic judgment and this means that the creditor has the right to collect from you.

There are many ways a creditor can collect a judgment from you. A judgment can be used to garnish your wages, which means that a proportional amount of your wages can be directly taken out of your paycheck each week until the debt is satisfied. That certainly has some humiliation and lack of control associated with it. It is better avoided.

Your bank accounts can also be "attached" meaning that money can be taken out of your bank accounts to pay your debt without your agreement.

You can have a lien placed against your property. All of your creditors want to get paid and a lien means that if you sell your house, the person who holds the lien gets paid first before you get anything out of the sale.

When a creditor has a judgment, they can file a lien, which can force you to sell your property so the creditor can be paid. You don't always have the luxury of waiting until you want to sell. It is best to avoid a judgment lien against your house.

Judgments can be really problematic. A creditor can use a judgment to take your personal property from you. Creditors especially like things such as Rolex watches or other jewelry, things that conjure images of days of wealth gone by.

If you don't file for bankruptcy, are seriously behind in your payments, and have received a judgment against you, some of your assets may be liquidated to pay your creditors.

STRATEGIES FOR KEEPING CERTAIN PROPERTY

If you are contemplating bankruptcy, there are some strategic steps the average debtor may choose to take to keep certain property. Keep

in mind that if you do file for bankruptcy, all of your transactions within the year prior to filing will be subject to inquiry by the bankruptcy trustee and if found to be made to perpetrate a fraud on your creditors, they could be reversed. *Do not do anything fraudulent.* Although some people get away with it in the moment, there is always some kind of comeuppance.

Financial transactions that you make prior to bankruptcy that are outside your normal pattern of behavior could be considered fraudulent so make sure to document everything. Your actions may raise red flags but may be perfectly within your legal boundaries. Whether or not a trustee or judge raises an eyebrow depends on how far in advance you are doing it, as well as the specific circumstances surrounding your situation. This is just one more reason for obtaining expert legal advice. If you have even one objectionable transaction that is ultimately reversed, your entire bankruptcy case may be tainted and your discharge can be denied.

There are some additional strategic things a debtor can do to prepare for bankruptcy or avoid bankruptcy that under current bankruptcy laws will not constitute fraud. There are steps you can take that are perfectly legal and may serve your interests given your circumstances.

In states with generous homestead exemption provisions, you can reduce the amount of your unsecured debt by using some of the homestead exemption by refinancing your home to pay off your unsecured creditors.

The down side is that this is frequently the first bad choice made by debtors in the attempt to deal with unwieldy credit card balances. After maxing out the equity in their homes with second mortgages or equity loans, debtors all too often run up still more unsecured debt and end up in bankruptcy anyway. You are now stuck paying an unmanageable mortgage, which is not dischargeable if you intend to keep your home.

If you are going to run up more credit card debt, you may have your discharge denied if it appears that you had no expectation of being able to pay it back. For example, if you are unemployed or have defaulted on other debts, you don't paint a pretty picture to a bankruptcy trustee. It is understandable if you are really strapped and need to use your credit for basics or just to maintain some kind of living standard. However, if you are at this stage you should be preparing to file for bankruptcy.

WHEN TO FILE

While you have some breathing room, you should file your case as soon as possible if you have the following factors:

- *You have an impending judgment against you.* This means someone has sued you and you really have no defense against the claim that you owe the money. In bankruptcy, not having the money is relevant, however, a suit against you for nonpayment can't be resolved in court in this way. Judgments can stay on public records virtually forever. It is very difficult to get them off your record although in some states you can accomplish this in the bankruptcy. In some states (where there is a specific statute for removing judgments), you have to file a certified copy of the discharge in every case where there is a judgment and ask the judge to remove the judgment.
- Your property has been seized (car repossessed, bank account attached, or wages garnished).

Alternatively, it might be advantageous to wait to file for bankruptcy if:

- Depending on your state and if your house is in foreclosure, you might want to wait because you may have a loan that would allow a reinstatement or forbearance plan.

  Forbearance is where you enter into a payment plan with the bank where the arrearages (past due balance) are added to the end of the loan, and you pay a higher monthly payment for a period of time after which the bank reinstates your mortgage. Like the satisfied debtor in our chapter on credit, this is a way to keep your home and perhaps work out a manageable payment. If you are otherwise solvent and have money coming in, you might be able to negotiate with other creditors to help you make it through. Sometimes they will even drop some finance charges or lower your interest rate. Keep in mind they want your business.
- You may want to sell your house and use the money to buy a more affordable house. It is better to do this by choice. You might even have some money to pay some creditors by making enough of a change in house price. At this point, you might very well welcome

the opportunity not to be house poor. Who needs something fancy when it is choking you?

One couple had a beautiful home in a lovely neighborhood but couldn't enjoy it because they knew that while they owed so much money and were in such debt they didn't really own it and could lose it. They sold their house, rented for a while until they could get back on their feet and now live in a modest home that is perfectly adequate. They enjoy it every day and know that it is not going to be taken away from them. It is wonderful to know that you can afford your lifestyle. Security can be far better than a large albatross with windows and doors.

Face the Facts

Unfortunately, if you don't do something like sell your house or find a forbearance plan through your lender, you might not be able to prevent the foreclosure of your home. If this is the case, and you know you have learned the "don't need a fancy house" lesson, you should definitely consult an attorney who specializes in Chapter 13 filings. In Chapter 13, you can keep your home and create a payment plan for other creditors around it. You don't want to have your home sold on the courthouse steps. This is terribly disheartening. If you are brave enough to face your problems, you can prevent this. Be willing to act fast if you have to. Don't wait to seek advice.

Foreclosure sales happen because of the nature of a home mortgage and the legal ramifications of having one. When you take out a mortgage to buy your house, the bank has a secured interest in the house for the amount of the loan. A foreclosure action is a lawsuit where the bank asks a judge to give your house to them to sell so that they can recover the outstanding balance of the loan.

A sale on the courthouse steps refers to weekly auctions of properties that have been the subject of a foreclosure. The sale often takes place right in the lobby of your local courthouse, or sometimes, literally on the steps. At a sale on the courthouse steps, your home will probably be sold for far less than its fair market value. Investors will bid against the bank who may open with a bid as low as one hundred dollars. Investors may go up to and/or exceed the amount of the mortgage. You can't bid at your own foreclosure sale, since you were the one who defaulted on the mortgage, and besides the investor who buys the house has to come up with the cash the same

day as the auction—if you had that kind of cash you wouldn't be in foreclosure in the first place. The bank has a credit for amount of the mortgage and if the investors fail to bid up to the amount of the mortgage, the bank gets the house and will then sell it in a foreclosure sale. If the bank buys the house and sells it and still has a deficiency (the sales price is less than the outstanding mortgage balance), they will sue you personally to recover the difference.

If someone else buys the property for more than the mortgage balance, and, if there are no other liens or second mortgages, it is possible that you would be able to claim the excess, but don't hold your breath. By the way, if you actually fail to properly claim it, it will eventually go back to the state.

PROTECTING YOUR ASSETS TAKES TIME

You may want to convert some assets to exempt property, or you may choose to liquidate property and pay off creditors at a discount, rather than filing bankruptcy. However, if you go this route, you must be careful whom you pay because under the bankruptcy laws you might be making preferential transfers if you pay one creditor 100 percent and the rest nothing. If you liquidate, furthermore, you may owe taxes on the money received if it is more than what you paid for the item sold. For example, if you have restored an antique car that you purchased for $1,000 and sold it for $12,000, you'll owe income tax on $11,000. Keep in mind that the bankruptcy trustee and the IRS are on intimate terms: The trustee will report to the IRS if they find you've got a gain you haven't reported.

In choosing which strategies to take to protect your assets, you must keep an eye on what happens if you are forced to file despite your best efforts. The bankruptcy trustee has the power to do asset searches for real property and bank accounts, check for unclaimed cars with the Department of Motor Vehicles, make random asset checks, obtain your bank statements and canceled checks, and get your tax returns from the IRS to verify statements made on your petition regarding your income and property.

Because of the volume of bankruptcies filed, these checks are made randomly or only if the trustee sees a red flag in your filing. If you keep everything as clean and organized as possible, you should have little difficulty even if the hounds are after you.

Here are some possible red flags:

- Debts incurred for luxuries such jewelry, vacations, hobbies, and the like, within 40 days before filing.
- Cash advances over $1,000, within 20 days of filing. These will be presumed to be nondischargeable. Last minute buying sprees can taint your entire case with a suspicion of fraud. If you have taken cash advances, wait three months before you file.

The idea of red flags is important. If something sticks out so obviously, the trustee will exercise his or her rights to investigate your financial affairs to determine the veracity of your entire case.

The trustee gets paid a percentage of assets recovered that can legitimately be liquidated to pay off creditors. If your trustee puts you through a thorough investigation, this often includes requiring you to produce all of your bank statements for a period of time preceding the filing and can include a visit to your house to count your silverware! Once you file for bankruptcy, for the duration of the proceeding your nonexempt possessions are, in fact, under the trustee's legal control. You can't sell them or give them away.

Preparing for your bankruptcy filing is a very important part of your overall strategy. In fact, it is where you have the most control over the outcome of your case. In the next chapter, you find out how to compare your possible options for filing so you can make a decision with or without counsel about which type of bankruptcy would be most useful to your situation.