

What to Pay First

How to Prioritize Your Payments When Finances Are Tight

By GRETA LaMOUNTAIN, Esq.

Consumer clients often come to bankruptcy lawyers when they have been battling for weeks or months, trying to determine which bills to pay and which can be delayed or avoided in the face of financial hardship and distress. Otherwise responsible consumers, from the lowest income levels to the highest, are in a panic.

Between housing, car payments, utilities, food, clothing, child care, car maintenance, and consumer debts, such as personal loans and credit-card bills, there simply is not enough money to fulfill every financial obligation.

In truth, many or most of us are just a few paychecks away from defaulting on all or some of our debts. Disconcertingly, in this economy, many of our financial situations are quickly devolving from apparent fiscal health to a question of, 'how do I pay all of my bills?' to 'which bills can I ignore completely?'

We all want to pay our bills. We try to pay every bill on time, albeit with varying degrees of success. We try to live within our means. We try to be smart, responsible professionals and business owners with stellar credit scores. We try to have ample credit, unused and available to us at the swipe of a card or the tap of a keyboard. We are successful consumers, and we have integrity. Those others — well — they are something less.

Unfortunately, today the distinctions between those who can meet these goals and those who cannot, between the responsible and the irresponsible, are diminishing as the economy slows, businesses fail, jobs are lost, bad loans rear their ugly heads, and many credit cards raise interest rates. Even those who consider themselves impervious to the economic downturn or immune to a declining credit score could find themselves realizing their own greatest fiscal fear: that they can no longer carry those debts that may have seemed reasonable and affordable at the time they were incurred.

Determining a strategy for prioritizing debt is stressful, as most of us do not want to leave bills unpaid. An uncomfortable but key question to consider in extreme circumstances may be whether debts are so overwhelming that bankruptcy should be considered. There is no one-size-fits-all plan when it comes to prioritizing bill payments, but there



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are a few things to consider. During times of financial difficulty, most of us fall broadly into one of these categories:

- **Temporary, likely-surmountable troubles.** Such individuals are struggling but do not have an untenable amount of unsecured debt. They are managing to pay housing expenses and can usually make at least minimum monthly payments, even if they are late. Their income has gone down, but it should be rebounding in the not-too-distant future. They are not choosing between home payments and feeding their families.

- **Possible bankruptcy candidates.** These individuals are already in arrears with credit cards, mortgage, car payments, or any combination of these. Current income cannot currently support debts, and these individuals cannot catch up with payments, even if regular income resumes. Bill collectors are making harassing calls, and debts have spiraled out of control.

The following list of priorities is intended to outline several of the most common financial obligations and to provide insight and ideas to those who find themselves personally affected by this worst economic crisis in decades, although, again, there is no one formula for debt prioritization. If your financial troubles are serious, you should consult a professional who can consider your personal circumstances.

Food, Child Care, and Medical Co-pays

It should seem obvious, but make certain that your family has enough food to eat and

has necessary medical prescriptions. It's distressing to hear that clients and their children are living without nutritious food, or that they are sacrificing heart, seizure, mental health, and other essential medications.

If you cannot maintain child care, you may lose work. In case there is no money for these necessities, you should quickly contact local food banks, apply for Mass Health benefits, and do whatever must be done. These expenses are more important than the mortgage, utilities, or an expensive vehicle.

Child Support

Court-ordered support is not dischargeable in bankruptcy and follows you forever. You can go to jail for failure to pay these obligations. If your ability to pay has changed, you must immediately petition the appropriate Family Court to modify your support obligation. Do not unilaterally suspend support payments.

Car Insurance

It is a crime to operate an uninsured vehicle in Massachusetts, so skipping car-insurance payments isn't a good idea.

Utilities

While it takes time for the bank to foreclose on your home or for a landlord to evict you from your apartment, utility companies such as fuel, electricity, cable, telephone, and Internet can interrupt service with little warning. While cable, Internet, and even telephone may be dispensable, fuel and electricity are basic requirements, particularly during

winter months. In some circumstances, assistance may be available.

Shelter

Whether a renter or a homeowner, there is no doubt that shelter is important. Budgeting for shelter is not first on this list for several reasons, but avoiding housing payments is not recommended as a preferred course of action for any but the most desperate of circumstances. That said, your home may no longer be within your means, and if you plan to file for bankruptcy, living rent- or mortgage-free for a few months while saving up for more affordable quarters may become unavoidable.

While you will face the stress of collections, foreclosure, and harassing phone calls, you will still have a roof over your head and the opportunity to save cash to move. No one in Massachusetts, not the foreclosing bank or your landlord, can evict you without a full court proceeding and a judgment for actual possession of the premises. A notice to quit from your landlord does not legally obligate you to move out.

Transportation

If you have high car payments and are planning to file for bankruptcy protection, strongly consider surrendering that vehicle. Any deficiency balance will be discharged in bankruptcy. If your situation does not warrant bankruptcy, keep in touch with your lender and make whatever payments you can. If you are paying several weeks slow, it is doubtful that your vehicle will be repossessed. You should consider trading an overpriced vehicle for a cheaper interim vehicle.

Income Taxes

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properly filed even if you cannot afford to pay them immediately. Federal and state taxing authorities will generally try to work with you in good faith. Taxes owed may be dischargeable in bankruptcy or negotiated down over time, depending on your situation. You are strongly urged to consult with an accountant to review your situation.

Real-estate Taxes

These must be paid eventually, but if your financial trouble is temporary, you likely can arrange to pay them over time. A municipality generally will only foreclose for failure to pay under egregious circumstances. While real-estate taxes are not dischargeable in bankruptcy, they constitute a statutory lien and will be paid even before your mortgage upon sale or foreclosure of the property.

Unsecured Debts

If your lines of credit are still in good standing and you can afford to make payments, make balance transfers to the lowest rates available and make minimum payments on time. This will help to keep you in good standing until your finances improve. If you are already behind, do not be intimidated by

threats of legal action or by other obnoxious, even illegal, actions taken by these creditors. You will not go to jail. Your wages will not be garnished without a court order. Your home will not be taken for failure to pay a credit card.

If you plan to file bankruptcy, do not pay your general unsecured debts at the expense of any other debt.

Conclusion

Lastly, here is a brief list of pointers for those of you facing financial difficulty:

- Do not allow creditors direct access to your accounts — not for mortgage, car, student loans, anything! You will regret it. Maintain control using online banking. Switch banks if you must to regain control.
- Try to work with your student loan provider to forbear payments. Student loans are hardly ever dischargeable in bankruptcy, so do not just ignore them.
- Avoid unnecessary or impulsive expenditures, even those that advertise \$0 down, 0% interest.
- Surrender your toys to the lender or sell them for reasonable value. Yes, that means the snowmobile, ATV, rider mower, and the old Jeeps you have hanging around.
- Avoid accessing retirement funds. If you are eligible for bankruptcy, your attorney can protect almost unlimited funds in a legitimate retirement account. You need these assets for the future. ■

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