

Can I give money to my son before filing bankruptcy?

I want to give my son \$20,000 for a wedding present, probably by borrowing from my 401K retirement account. But **I also need to file bankruptcy**. Would that be a problem?

Problem? Oh yes. The bankruptcy code allows the bankruptcy trustee to go after and take back what are known as "fraudulent transfers".



Note that this does not mean "fraud" in the usual criminal sense, but instead just an "unfairness" against the person's creditors. The federal bankruptcy code also allows the trustee to use the state's laws regarding fraudulent transfers in order to recover the money.

The California Civil Code essentially provides that a transfer (gift, etc.) is fraudulent against creditors if ...

- **The giver didn't receive reasonably equivalent value** in exchange (of course, with a gift, this would be true). - AND -
- **The giver was insolvent (unable to pay bill on time, etc.)** at the time or just after. If you need to file bankruptcy, that would likely be true.

There are many other provisions in that California code section, but the above is the essence of it for the purpose of answering this question.

Bottom line? Giving your son \$20,000 and then filing bankruptcy would likely result in the trustee suing your son to get that money back to give to your creditors.

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