

Student Loans and Bankruptcy

The rising cost of post-graduate tuition along with the challenging job market have created a heavy financial burden for a great many people. Moreover, having student loans can greatly limit one's ability to make ends meet or provide the economic lifestyle they deserve.

Most debt can be eliminated or greatly reduced in a Chapter 7 or Chapter 13 Bankruptcy. However, due to policy reasons, certain types generally cannot be discharged. These debts include income tax debt, child support arrears and student loans.

A Chapter 7 or Chapter 13 Bankruptcy can enable someone to increase his/her financial outlook by eliminating most kinds of debt and provide the economic fresh start to begin planning for the future.

Although student loans are not entirely impossible to remove in bankruptcy, there is a much stricter showing necessary to have these types of debts discharged. Unsecured debt, such as credit cards, medical bills, payday loans and most civil judgments can be eliminated as a matter of course, but student loans require a much higher finding of "undue hardship" before a court will permit their discharge. This undue hardship is a greater standard than the typical "garden-variety hardship." Courts look at three key elements to determine showing of undue hardship:

1. A debtor cannot maintain a minimal standard of living.
To meet the first element, debtor must show that he/she is unable to maintain a minimal standard of living based on current income if required to repay the loans. This extends to supporting themselves as well as dependents.
2. Additional circumstances exist indicating the state of affairs are not likely to change.
A debtor must show that there are exceptional circumstances which are greatly suggestive of an ongoing inability to repay the loans over an extended period of time. These types of ongoing inability typically include a serious illness or disability of a debtor or dependent. This inability must extend for a substantial portion of the repayment period.
3. The Debtor has made a good faith effort to repay the loan.
A debtor must show that a genuine, good faith effort has been made to repay the loans. How long and how much is necessary to have paid is a subjective analysis. To remain consistent with the high burden necessary to remove student loans, courts will evaluate accordingly.

Discharging student loans in bankruptcy is not impossible, but under the right circumstances it may be possible to have them discharged or greatly reduced. Bankruptcy can eliminate virtually all other unsecured debt, thereby greatly reducing the financial impact student loan repayment may have on a debtor and his/her family.

If you have questions about filing for bankruptcy and are curious about your options, it is best to seek out the advice of a qualified bankruptcy attorney in your area.