

Bankruptcy – Where Discharge is a Good Thing!

By Arizona Bankruptcy Attorney John Skiba

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I have to admit, I stole my title for this blog from a T-Shirt that I saw at last year's convention for the National Association of Consumer Bankruptcy Attorneys (NACBA). The bankruptcy discharge is a good thing and in fact is the reason you file for bankruptcy. Whether you are filing a chapter 7 bankruptcy or a chapter 13 bankruptcy the end result of your case is the bankruptcy court entering a discharge order. The discharge order eliminates your debts. While the discharge order is sent by the bankruptcy court to all of your creditors, the discharge impacts certain debts differently.

Unsecured Debts

Unsecured debts are any debt that do not have collateral attached to it. Typical unsecured debts are credit cards, medical bills, judgments, pay day loans, etc. In a chapter 7 bankruptcy typically all of your unsecured debts are discharged or eliminated. There are a few exceptions:

Taxes: Most taxes are not discharged. However, if the taxes are at least three years old and you filed a return the year they were due, you may be able to discharge income taxes.

Student Loans: Student loans are typically not discharged in any type of bankruptcy. If you have sustained a disability that makes it impossible for you to earn a living, you may get a discharge of your student loan or maybe just a partial discharge. Student loans are very difficult to eliminate in bankruptcy.

Debts Incurred Through Fraud: Taxes and student loans are the most common unsecured debts that are not discharged through the bankruptcy case. However, certain debts that are found to be incurred through fraud can be deemed non-dischargeable by the bankruptcy court. This requires the creditor to seek a determination through the bankruptcy court that these items are non-dischargeable.

Secured Debts

For the most part, the discharge does not impact secured creditors. A secured creditor will maintain its lien on the property securing the debt even though a discharge has been entered. For instance, the debt on a car loan is not discharged through the bankruptcy and if you want to keep the car after bankruptcy you will be required to make the payment. The same is true with house payments.

The discharge is the goal of the bankruptcy and its ability to eliminate your debts is the reason that you were willing to take the hit on your credit to file bankruptcy. Because of this, if you have filed for bankruptcy, received a discharge, and now are having creditors call you, you need to speak with an attorney to enforce the discharge order. The bankruptcy court will sanction the creditor and even have them pay your attorneys fees.

Arizona bankruptcy attorney John Skiba offers a free bankruptcy consultation. He can be reached at (480) 464-1111.