



Discharging Student Loans In a Bankruptcy Case

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Student loans can only be discharged in a bankruptcy case by obtaining a favorable ruling in an adversary proceeding, which is essentially a mini-lawsuit filed within the bankruptcy case. Courts use the factors set out in Brunner v. NY State Higher Educ. Serv. Corp., 831 F.2d 295 (2nd Cir. 1987) to decide if a discharge of the student loan is appropriate. The three elements of the Brunner test are:

1. the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for himself and his dependents if forced to repay the loans;
2. additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
3. the debtor has made good faith efforts to repay the loans.

I have succeeded in having student loans discharged in two of my bankruptcy cases. In one, the debtor was a 72-year-old man who was in the beginning stages of Alzheimer's disease. In the other, the debtor was a 57-year-old grandmother who was raising three of her grandchildren, while also caring for her terminally ill mother. In both cases, the debtors had made payments on their student loans in the past, had very limited income, and their circumstances were unlikely to improve in the foreseeable future.

I have been contacted in the past by people in their 20s or 30s who were interested in discharging their student loans in bankruptcy, but I have never pursued those cases.

The courts will not grant a discharge of a student loan if the person has many productive years ahead of them in which to repay the loan.

The Department of Education will sometimes forgive a student loan if a person has attended a school that provided a worthless degree, the school has gone out of business, or some other situation exists that indicates fraud by the school. If you feel that your situation falls into this category, contact the U.S. Department of Education to pursue a possible forgiveness of your loan or to get a forbearance or other help in repaying your loan.