Discharge Of Debts Under Chapter 7 Bankruptcy

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Chapter 7 bankruptcy is often the best alternative for debtors who qualify because it allows them to discharge non-exempt debts. This means the debtor is released from personal liability for discharged debts and creditors who were owed such debts are prevented from taking any further action to collect.

There are, however, exceptions to discharge. First certain types of debts cannot be discharged. These are called "exempt" debts because they are exempt from discharge. These include alimony and child support payments, certain taxes, student loans, debts for causing death or personal injury while intoxicated and using a motor vehicle, debts for willful or malicious injury to a person, entity or property, and others.

In addition, a discharge can be denied with respect to non-exempt debts for various reasons, including:

1. Failure to keep or produce adequate books or financial records

2. Failure to satisfactorily explain any loss of assets which may have been used to pay creditors

3. Perjury or other bankruptcy crimes

4. Failure to obey a lawful order of the bankruptcy court

5. Fraudulently transferring, concealing, or destroying property that would have become property of the estate

6. Failure to complete an approved instructional course concerning financial management

Also, secured creditors may retain some rights to seize property securing an underlying debt even after a discharge is granted. A secured debt could include, for example, an automobile loan, in which the automobile serves as security for the debt owed. In this case, a debtor may be required to "reaffirm" the debt, i.e. agree to pay it in full or part as agreed between the parties, if the debtor wants to keep the secured property and continue using it.

Because of the complexity of Chapter 7, including exceptions and other issues raised above, it is advisable to seek legal counsel before proceeding.

Schein & Cai advises clients on Chapter 7 and other bankruptcy matters.