Arizona Bankruptcy Essentials: Chapter 7 Dischargeability Concerns

By Lawrence 'D' Pew, Arizona Bankruptcy Lawyer

Did you know that the Chapter 7 Liquidation continues to be the most sought after form of bankruptcy protection for the consumer debtor? There are at least three reasons for this:

> ***First,*** *Chapter 7 provides a predictable and expedient form of debt relief, taking only four to six months to receive a discharge in an ideal case. Compare that to a three-year to five-year commitment under a Chapter 13 Wage Earner reorganization plan!*
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> ***Second,*** *the bankruptcy rules and procedures for Chapter 7 are more easily understood than with other chapters under the U.S. Bankruptcy Code. This makes a liquidation bankruptcy more approachable to most consumer debtors, particularly those who consider filing without representation from an Arizona bankruptcy lawyer.*
>
> ***Third,*** *the filing fee for a liquidation bankruptcy is still fairly reasonable. Chapter 7 will cost you $306 at the time of filing. Chapter 13 is a little less, requiring $281 at the time of filing. Compare those filing fees with the whopping $1,046 fee required for a Chapter 11 Reorganization bankruptcy!*

In this segment of our Arizona Bankruptcy Essentials series, we touch on select concepts in the Chapter 7 bankruptcy process regarding certain nondischargeable debts. If you are considering the possibility of filing for debt relief through bankruptcy, then you definitely want to read this article from beginning to end.

Discharge and a Fresh Start Through Chapter 7, Well Almost...

You've had enough of obnoxious and unrelenting bill collectors, of wage garnishments, of threats to repossess your car, of threats to foreclose on your home, and the stress of civil lawsuits filed against you. The moment your Chapter 7 petition is filed, you have immediate protection from creditors under the automatic stay – they simply have to stop while the court and the case trustee sort things out.

When you file bankruptcy, you're seeking true debt relief which comes in the form of a federal bankruptcy discharge. Before you decide that a liquidation bankruptcy is right for you, make sure you know which debts will be discharged. If any of your debts are not discharged in the bankruptcy, then you will still have to pay them off after the bankruptcy is over.

What Debts Are Nondischargeable in a Chapter 7 Bankruptcy?

Under 11 U.S.C. § 523(a), there are two groups of nondischargeable debts in bankruptcy. *First,* there are those debts that require a creditor's objection followed by a favorable court ruling to prevent discharge. *Second,* there are those debts that are automatically excepted from discharge by law (no creditor objection need be filed).

The First Group. The first group of nondischargeable debts – that is, those excepted from discharge after a creditor's objection is successful – include debts that result from:

- false pretenses, false representation, or fraud
- fraud, embezzlement, or breach of trust in a fiduciary capacity
- willful and malicious injury to another, or another's property
- *divorce or separation owed to a child, spouse, or former spouse that are not in the nature of support (these are property settlements).* We will discuss this last group of nondischargeable debts in a moment.

The Second Group. The second group of automatically nondischargeable debts include those obligations that were omitted from the bankruptcy schedules. That's certainly strong incentive to be very thorough in disclosing ALL of your debts and creditors on your petition schedules. Along with most federal, state and local taxes, other automatically nondischargeable debts are educational loans that do not impose an undue financial hardship on the debtor. Another important group of automatically excepted debts are those that arose out of a DUI/DWI, as well as fees and court costs imposed on a prisoner.

Family Support Obligations in Chapter 7 Bankruptcy

If you pay child support or alimony, then you need to learn the distinction between nondischargeable family debts *in the nature of support* and *not in the nature of support*.

- ***Family Debts in the Nature of Support.***

When the debtor is under a court order to pay "alimony, maintenance, or support" for a child, spouse, or former spouse, regardless of when the debt arose, then those Domestic Support Obligations (DSOs) are nondischargeable debts in any bankruptcy, not just a Chapter 7, along with any interest that accrued on those DSOs under state law. 11 U.S.C. § 101(14A), § 523(a)(5). Furthermore, the bankruptcy court is concerned with the substance, or purpose, of the obligation, not the title. Although the DSO is nondischargeable in bankruptcy, the obligor is free to petition the Arizona Superior Court to request a reduction in the amount of support to be paid.

- ***Family Debts Not in the Nature of Support.***

Although these are not DSOs per se, they still represent a necessary financial resource for the debtor's former spouse or family. Often these are property settlements in a divorce decree to be made payable over time. Consequently, these debts receive a certain level of priority over other debts, even though not technically a form of spousal support. 11 U.S.C. § 523(a)(15). *These non-support debts are potentially nondischargeable, but not automatically so.* As a creditor, the former spouse must take action by filing his or her objection to the discharge of the property settlement obligation. If the court grants that objection, then the debt is not discharged and the debtor will keep making payments on the property settlement to the former spouse post-bankruptcy. If the former spouse does not file an objection or loses on the objection, then the debt is discharged.

If you have debts that could be automatically excepted from your discharge, or that could be excepted if an objection is filed by the creditor, then take some time to meet with and discuss your specific concerns with an Arizona bankruptcy lawyer.

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Lawrence 'D' Pew is an experienced tax, bankruptcy, and transactional attorney, and founder of the Pew Law Center, PLLC, a leading Arizona tax and bankruptcy law firm focused exclusively on debt relief. With offices in Mesa, the law firm serves Arizona residents in the greater Phoenix area, including Scottsdale, Mesa, Tempe, Gilbert, and Chandler. As a client-oriented law firm with a mission to always exceed client expectations, the Pew Law Center has helped over 2,000 people file for bankruptcy and eliminate over $100 Million in debt.
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