Debts that Remain After a Chapter 7 Discharge.

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If you file for bankruptcy under Chapter 7, you should be aware that not all debts are eliminated (or "discharged") once the bankruptcy process is complete. Generally speaking, in a Chapter 7 proceeding, the following debts are not discharged:

 •Debts or creditors not listed on the schedules filed at the outset of the case.

•Most student loans, unless repayment would cause the debtor and his or her dependents undue hardship (more on student loans below).

•Recent federal, state, and local taxes.

•Child support and spousal maintenance (alimony).

•Government-imposed restitution, fines, and penalties.

•Court fees.

•Debts resulting from driving while intoxicated.

•Debts not dischargeable in a previous bankruptcy because of the debtor's fraud.

Student Loans

As noted in the above list, educational loans are generally not discharged by a Chapter 7 bankruptcy. They may be dischargeable, however, if the court finds that paying off the loan will impose an "undue hardship" on the debtor and his or her dependents.

In order to qualify for a hardship discharge of a student loan, the debtor must demonstrate that he or she cannot make payments at the time the bankruptcy is filed, and will not be able to make payments in the future. The debtor must apply for the hardship discharge before discharge of the debtor's other debts is granted. Application for a hardship discharge is not included in the standard bankruptcy fees, and must be paid for after the case is filed.

The Bankruptcy Code does not specifically define the requirements for granting a hardship discharge of a student loan. Courts have applied different standards, but they often apply a three-part test to determine eligibility:

1.Income -- if the debtor is forced to pay off the student loan, the debtor will not be able to maintain a minimum standard of living for himself or herself and his or her dependents;

 2.Duration -- the financial circumstances that satisfy the income test in (1) will continue for a significant portion of the repayment period; and

 3.Good Faith -- the debtor must have made a good-faith effort to repay the loan prior to the bankruptcy.

Additional Non-Dischargeable Debts

In addition, the following debts are not discharged if the creditor objects during the case and proves that the debt fits one of these categories:

 •Debts from fraud, including certain debts for luxury goods or services incurred within ninety days before filing and certain cash advances taken within seventy days after filing.

•Debts from willful and malicious acts.

•Debts from embezzlement, larceny, or breach of fiduciary duty.

•Debts from a divorce settlement agreement or court decree, if the debtor has the ability to pay and the detriment to the recipient would be greater than the benefit to the debtor