

V. Discharge/Dischargeability

A. Chapter 7

Only an individual debtor is eligible for a discharge in a chapter 7 case.³⁰⁰

1. Personal Financial Management Course

Before receiving a discharge, an individual debtor must complete an approved instructional course concerning personal financial management.³⁰¹ This provision is not applicable to a debtor who because of incapacity, disability, or service in the armed forces in a combat zone is unable to complete the requirements. The clerk of each court maintains a publicly available list of approved credit counseling agencies and financial management instructional courses.³⁰² This information is also available at www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm.

2. Discharged Debts

Discharge in chapter 7 discharges the debtor from most debts that arose before (i) the date of the order for relief or (ii) the petition date in voluntary cases. Debtor is also discharged from any liability on any claim arising under 11 U.S.C. § 502. The scope of discharge extends to all claims whether allowed or allowable, and whether or not a proof of claim was filed.³⁰³

300 11 U.S.C. § 727(a)(1).

301 11 U.S.C. § 727(a)(11).

302 11 U.S.C. § 111.

303 11 U.S.C. § 727(b).

3. Nondischargeable Debts

Certain debts are excepted from discharge, including:

- a. certain taxes and customs duties as follows:³⁰⁴
 - i. those entitled to priority,³⁰⁵
 - ii. where no return is filed by the debtor,³⁰⁶
 - iii. where a late return (filed after its due date, including extensions) is filed less than two years before the date the bankruptcy is filed,³⁰⁷
 - iv. where a fraudulent return is filed,³⁰⁸ or
 - v. where the debtor willfully attempted in any manner to evade or defeat the tax;³⁰⁹
 - vi. a debt for money, property or services, or an extension, renewal or refinance of credit obtained by false pretenses, false representation or actual fraud, or by use of a written, intentionally deceptive statement that is materially false respecting a debtor's financial condition, on which a creditor relied;³¹⁰
- b. a consumer debt for luxury goods or services exceeding \$600 incurred within 90 days of the filing;³¹¹

304 11 U.S.C. § 523(a)(1).

305 11 U.S.C. § 523(a)(1)(A).

306 A return filed by a taxing authority on behalf of a taxpayer who has provided information sufficient to complete a return constitutes filing a return (*see* 26 U.S.C. § 6020(a) or equivalent state law) and the debt can be discharged; a return filed on behalf of a taxpayer based on information the taxing authority obtains through testimony or otherwise does not constitute filing a return (*see* 26 U.S.C. § 6020(b) or equivalent state law) and the debt cannot be discharged. 11 U.S.C. § 523(a)(1).

307 11 U.S.C. § 523(a)(1)(B).

308 11 U.S.C. § 523(a)(1)(C).

309 *Id.*

310 11 U.S.C. § 523(a)(2)(A), (B).

311 11 U.S.C. § 523(a)(2)(C)(i)(I).

- c. a cash advance on an open-end account exceeding \$875 incurred within 70 days of the filing;³¹²
- d. an unlisted or unscheduled debt;³¹³
- e. a debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny;³¹⁴
- f. a domestic-support obligation;³¹⁵
- g. a debt for willful or malicious injury by the debtor to the person or property of another;³¹⁶
- h. Any debt that is a fine, penalty or forfeiture to a governmental unit;³¹⁷
- i. Except to the extent not discharging the debt will impose an undue hardship on the debtor or debtor's dependents, an education loan or obligation, including:³¹⁸
 - i. a loan made, issued or guaranteed by a government unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution,
 - ii. an obligation to repay an educational benefit, scholarship or stipend, or
 - iii. any other qualified educational loan, as defined in 26 U.S.C. § 221(d);
- j. a debt arising from death or personal injury where the liability was incurred as a result of the unlawful operation of a motor vehicle, vessel or aircraft due to the use of alcohol, drugs or another substance;³¹⁹

312 11 U.S.C. § 523(a)(2)(C)(i)(II).

313 11 U.S.C. § 523(a)(3).

314 11 U.S.C. § 523(a)(4).

315 11 U.S.C. § 523(a)(5).

316 11 U.S.C. § 523(a)(6).

317 11 U.S.C. § 523(a)(7).

318 11 U.S.C. § 523(a)(8).

319 11 U.S.C. § 523(a)(9).

- k. any debt from a prior bankruptcy case in which the debtor waived or was denied a discharge for a reason other than the time bars;³²⁰
- l. a debt owed to a spouse, former spouse or child, other than a domestic-support obligation, in connection with a property settlement or decree in the dissolution of a marriage;³²¹
- m. a debt for money borrowed to pay an otherwise nondischargeable federal, state or local tax liability;³²²
- n. post-petition dues and assessments by a membership association with respect to the debtor's interest in a condominium unit, in a share of a cooperative corporation or in a lot in a homeowners association;³²³ and
- o. a debt owed to an ERISA-qualified pension, stock bonus, profit-sharing or other plan.³²⁴

4. **Determination of Dischargeability**

a. **Exclusive Bankruptcy Jurisdiction**

A debtor is entitled to a discharge of a debt listed in 11 U.S.C. § 523(a)(2) (fraud), (4) (larceny or embezzlement) or (6) (willful and malicious injury) unless the creditor to whom the debt is owed obtains a determination from the bankruptcy court that the debt is nondischargeable.³²⁵ An action to determine the dischargeability of those obligations is made by the filing of an adversary action in the bankruptcy court.³²⁶

320 11 U.S.C. § 523(a)(10).

321 11 U.S.C. § 523(a)(15).

322 11 U.S.C. § 523(a)(14) and (14A).

323 11 U.S.C. § 523(a)(16).

324 11 U.S.C. § 523(a)(18).

325 11 U.S.C. § 523(c).

326 Fed. R. Bankr. P. 7001(6).

b. Timing

A complaint to determine dischargeability of a debt on any grounds other than those specified in 11 U.S.C. § 523(c) may be brought in the bankruptcy court at any time and a case may be reopened without payment of an additional filing fee for this purpose.³²⁷ A complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(c) must be filed within 60 days after the 11 U.S.C. § 341(a) meeting of creditors.³²⁸

5. Denial of Discharge

In addition to the potential nondischargeability of individual debts, a debtor's entire discharge can be denied under certain circumstances.

a. Fraud, Concealment, False Oath, Etc.

A chapter 7 discharge may be denied if a debtor:

- (i) with an intent to hinder, delay or defraud the creditor or officer of the estate, transferred, concealed or removed (1) property of the debtor within one year before the date of filing of the petition or (2) property of the estate after the filing of the petition;³²⁹
- (ii) has concealed, destroyed, mutilated or failed to preserve any record from which the debtor's financial condition might be ascertained;³³⁰
- (iii) knowingly and fraudulently, in or in connection with the case, made a false oath;³³¹

327 Fed. R. Bankr. P. 4007(b).

328 Fed. R. Bankr. P. 4007(c).

329 11 U.S.C. § 727(a)(2).

330 11 U.S.C. § 727(a)(3).

331 11 U.S.C. § 727(a)(4).

- (iv) has failed to explain satisfactorily any loss of assets or deficiency of assets to meet the debtor's liabilities;³³²
- (v) has refused, in the case, to obey any lawful order of the court, on the ground of privilege against self-incrimination, to respond to a material question or to testify, after the debtor has been granted immunity; or, on a ground other than a properly invoked privilege against self-incrimination, to respond to a material question or to testify;³³³
- (vi) has been granted a discharge in a chapter 7 or chapter 11 case commenced within eight years before filing the petition;³³⁴
- (vii) has been granted a chapter 13 discharge in a case commenced within six years before the date the petition was filed, unless payments under the plan in the former case totaled at least (i) 100 percent of the allowed unsecured claims or (ii) 70 percent of the allowed unsecured claims and where the plan was proposed by the debtor in good faith and the represented the debtor's best effort;³³⁵ or
- (viii) if the debtor waives the discharge in a post-petition writing, and the court approves.³³⁶

b. Felonies and Criminal Acts

Entry of discharge may be delayed if the court finds reasonable cause to believe that in a case in which the homestead limitation of 11 U.S.C. § 522(q) applies there is pending a proceeding that falls within the scope of 11

332 11 U.S.C. § 727(a)(5).

333 11 U.S.C. § 727(a)(6).

334 11 U.S.C. § 727(a)(8).

335 11 U.S.C. § 727(a)(9).

336 11 U.S.C. § 727(a)(10).

U.S.C. § 522(q)(1).³³⁷ Upon conclusion of the proceedings, discharge is entered. If the pending 11 U.S.C. § 522(q) proceeding results in a judgment adverse to the debtor, the homestead exemption of \$146,450 applies.

6. Revocation of Discharge

a. Grounds

On request of any creditor or the trustee and after notice and hearing, the court shall revoke a discharge if:³³⁸

- (i) the discharge was obtained through fraud and the requesting party did not know of the fraud until after the granting of the discharge;³³⁹
- (ii) the debtor knowingly and fraudulently retained property of the estate;³⁴⁰
- (iii) the debtor has refused, in the case, to obey any lawful order of the court, on the ground of privilege against self-incrimination; to respond to a material question or to testify, after the debtor has been granted immunity; or, on a ground other than a properly invoked privilege against self-incrimination, to respond to a material question or to testify;³⁴¹
- (iv) the debtor fails to explain satisfactorily a material misstatement in an audit referred to in 28 U.S.C. § 586(f) (U.S. Trustee's audit);³⁴² or
- (v) the debtor fails to make available for inspection all necessary accounts, papers, documents, financial

337 11 U.S.C. § 727(a)(12); H.R. Rep. 109-31(I) at 84 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 150 (2005).

338 11 U.S.C. § 727(d).

339 11 U.S.C. § 727(d)(1).

340 11 U.S.C. § 727(d)(2).

341 11 U.S.C. § 727(d)(3).

342 11 U.S.C. § 727(d)(4)(A).

records, files or property requested by an auditor under 28 U.S.C. § 586(f).³⁴³

b. Timing

An adversary action to revoke a discharge must be brought not later than:³⁴⁴

- (i) within one year of the date of entry of the discharge if the discharge was obtained through fraud; or
- (ii) within one year of the date of entry of the discharge or the case is closed, whichever is later if either 11 U.S.C. §§ 727(d)(2) (or 727(d)(3)) applies.

B. Chapter 13

1. Discharge in Chapter 13

If the debtor has completed all payments under the plan, all claims, with some exceptions, provided for in the plan or disallowed under 11 U.S.C. § 502 are discharged.³⁴⁵ However, even if payments under the plan are not completed, the debtor may nevertheless be eligible for a “hardship” discharge, but only if: the failure to complete payments is due to circumstances for which the debtor should not be justifiably held accountable; the value as of the effective date of the plan, of property actually distributed under the plan on each allowed unsecured claim is not less than the amount that would have been paid had the estate been liquidated under chapter 7; and modification of the plan is not practicable under 11 U.S.C. § 1329.³⁴⁶

2. Personal Financial Management Course

The same requirements apply as in chapter 7.³⁴⁷

³⁴³ 11 U.S.C. § 727(d)(4)(B).

³⁴⁴ 11 U.S.C. § 727(e).

³⁴⁵ 11 U.S.C. § 1328(a).

³⁴⁶ 11 U.S.C. § 1328(b).

³⁴⁷ 11 U.S.C. § 1328(g); *cf.* 11 U.S.C. § 727(a)(11).

3. Exceptions to Discharge in Chapter 13

A discharge does not apply to a post-petition consumer debt for property or services necessary for the debtor's performance under the plan, for which the trustee's prior approval was practicable, but was not obtained.³⁴⁸

a. Exceptions to Discharge

The law favors a debtor's proceeding under chapter 13. As a result, there are fewer exceptions to a discharge in chapter 13 than in a chapter 7. The exceptions, subject to 11 U.S.C. § 523(c) are:

- (i) long-term obligations specifically provided for under the plan and debts for domestic-support obligations;³⁴⁹
- (ii) tax obligations with respect to or arising from returns filed late or not at all, fraudulent returns, a willful attempt to evade or defeat taxes, or taxes required to be withheld in any capacity whatsoever;³⁵⁰
- (iii) debts for money, property or services, or an extension, renewal or refinance of credit obtained by false pretenses, false representation or actual fraud, or by use of a written statement that is materially false respecting a debtor's financial condition, on which a creditor relied, and certain other consumer debts;³⁵¹
- (iv) unscheduled debts;³⁵²

³⁴⁸ 11 U.S.C. § 1328(d).

³⁴⁹ 11 U.S.C. §§ 1328(a)(1), 1322(b)(5) and 523(a)(5).

³⁵⁰ 11 U.S.C. §§ 1328(a)(2) and 523(a)(1).

³⁵¹ 11 U.S.C. §§ 1328(a)(2) and 523(a)(2).

³⁵² 11 U.S.C. §§ 1328(a)(2) and 523(a)(3).

- (v) debts for certain student loans, unless their exception would impose an undue hardship on the debtor and the debtor's dependents;³⁵³
- (vi) death or personal-injury claims caused by a debtor's operating a motor vehicle, vessel or aircraft while intoxicated;³⁵⁴
- (vii) debts for restitution and fines included in criminal sentences;³⁵⁵ and
- (viii) debts for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury or the death of an individual.³⁵⁶

b. Timing

A complaint to determine dischargeability of a debt on any grounds other than those specified in 11 U.S.C. § 523(c) may be brought in the bankruptcy court at any time and a case may be reopened without payment of an additional filing fee for this purpose.³⁵⁷ A complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(c) must be filed within 60 days after the 11 U.S.C. § 341(a) meeting of creditors.³⁵⁸

c. “Hardship” Discharge

A “hardship” discharge in chapter 13 is similar to a discharge in chapter 7 in that long-term debts and debts specified in 11 U.S.C. § 523(a) are not discharged.³⁵⁹ If the debtor moves for a hardship discharge, the court fixes the

353 11 U.S.C. §§ 1328(a)(2) and 523(a)(8).

354 11 U.S.C. §§ 1328(a)(2) and 523(a)(9).

355 11 U.S.C. § 1328(a)(3).

356 11 U.S.C. § 1328(a)(4).

357 Fed. R. Bankr. P. 4007(b).

358 Fed. R. Bankr. P. 4007(c).

359 11 U.S.C. § 1328(c).

time for bringing a complaint under 11 U.S.C. § 523(a)(6), giving not less than 30 days notice to creditors.³⁶⁰

d. Effect of Prior Discharge

A discharge may not be granted in a chapter 13 case if the debtor has been granted a discharge in a prior proceeding filed under chapter 7, 11 or 12 within four years preceding the date of the filing of the petition, or has been granted a chapter 13 discharge within two years preceding the date of the filing of the petition.³⁶¹ The statute is ambiguous as to how to count the look-back period for a debtor's eligibility for a discharge in a new case.

4. Revocation of Discharge

A chapter 13 discharge may be revoked at the request of a party in interest if the request is made within one year after the discharge is granted, if the “discharge was obtained by the debtor through fraud,” and if the requester did not know of the fraud until after the discharge.³⁶²

C. Effect of Discharge

A discharge voids any judgment that imposes personal liability on the debtor with respect to any debt discharged, whether or not discharge of the debt is waived, and enjoins the commencement or continuation of any action or an act to collect, recover, or offset any debt as a personal liability of the debtor, whether or not discharge of the debt is waived.³⁶³ Upon the entry by the court of the discharge order, a permanent injunction prevents the creditors whose debts were discharged from collection and other actions against the debtor personally. Normally, a violation of the discharge injunction is adjudicated and sanctioned as a civil contempt matter, pursuant to 11 U.S.C. § 105.

³⁶⁰ Fed. R. Bankr. P. 4007(d).

³⁶¹ 11 U.S.C. § 1328(f).

³⁶² 11 U.S.C. § 1328(e).

³⁶³ 11 U.S.C. § 524.

D. Delay in Entry of Discharge

Just as in a chapter 7 proceeding, entry of discharge may be delayed if 11 U.S.C. § 522(q) applies.³⁶⁴

³⁶⁴ 11 U.S.C. § 1328(h).