

Student loans: Can they be discharged in bankruptcy?

Written by Australian Business

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Article provided by Guerrieri, Cox & Associates Visit us at <http://www.columbusdebtrelief.com>

A college diploma is a helpful tool for job-seekers in today's economy. The New York Times reports that among employees sorted by educational level, the only group of workers with more people employed since the recession began in 2008 is college graduates. However, the cost of college is high. Many students must take out loans to attend college. When it comes to student loans, there are only certain circumstances under which a debtor can have his or her educational debt discharged in a bankruptcy proceeding.

Even if most debtors are unable to discharge their student loans, many people feel that by reducing or eliminating other obligations, they are in a better position to pay their non-dischargeable debts. In addition, Chapter 13 debtors are also able to have collection actions against them by their student loans stayed or stopped while they are in their Chapter 13 plan.

Undue hardship

Student loan bills start coming six months after the borrower stops taking courses, regardless of whether he or she has graduated. Failure to pay these bills on time will lead to additional fees, including late fees and eventually collection fees. There are payment plans available, but it can be difficult for the borrower to make the minimum payments if he or she cannot find a decent-paying job. Sometimes the amount due becomes too much to handle.

Generally, student loans cannot be discharged in bankruptcy. However, there is an exception to the rule. A provision of the Bankruptcy Code allows an educational debt to be discharged in the limited circumstance where it can be shown that repaying the obligation would impose an undue hardship upon the debtor and his or her dependents.

The statute does not define undue hardship, so bankruptcy courts use a three-part test to determine if the debt can be discharged:-The debtor cannot maintain, based on current income and expenses, a minimal standard of living for himself or herself and his or her dependents if

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forced to repay the loans.-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.-The debtor has made good-faith efforts to repay the loans.

Under the first prong, it is not expected that a debtor deprive himself or herself of basic necessities. Rather, a debtor should use his or her best efforts to maximize income within his or her vocational profile. In addition, a debtor is expected to do some belt-tightening and forego some of the amenities to which he or she has become accustomed.

To meet the second prong's requirements, the debtor must show unique or exceptional circumstances. For instance, if a debtor has a long-lasting illness or is responsible for a large number of dependents, the court may find that the debtor has satisfied the second element. In a case in which the debtor had five young children, two of whom were autistic twins, the court found it unlikely that she would be able to work until the children reached the age of majority, and thus discharged her debt.

The good-faith prong may be satisfied if the debtor has not willfully or negligently caused his or her own default; rather, the debtor's financial plight must be due to factors that are beyond his or her reasonable control. Thus, the scrutiny into the debtor's good faith will be into the debtor's actions prior to filing for bankruptcy, including efforts to obtain employment and to maximize income and minimize expenses.

Each undue hardship determination is unique to the circumstances of the debtor. If you have significant student loan debt, contact an experienced attorney to discuss whether you may be able to obtain such a determination. In the alternative, a lawyer can inform you of other options for repaying your loans. A bankruptcy attorney can help you deal with your debts and get a fresh start.