**Can I Discharge a Student Loan in Bankruptcy?**

**I’ve heard you cannot discharge student loans in bankruptcy. Is this true?**

As a general rule, student loans are not discharged in bankruptcy. In other words, while the bankruptcy may relieve you of responsibility for most debts, you will still owe your student loans.

There is one important exception, however – you may discharge student loans if you can prove “undue hardship.”

**What is the “undue hardship” exception?**

The meaning of “undue hardship” varies among different courts around the country. However, in Indiana and many states, you must prove three things:

* You cannot maintain, based on current income and expenses, a minimal standard of living if you are forced to repay the loan.
* There are exceptional, long-term circumstances that make it unlikely that you will be able to repay the loan for a significant period of time.
* You have made good faith efforts to repay the loan.

**Do these rules apply to all student loans?**

These rules apply to all student loans which are guaranteed or subsidized by federal, state or local government. They also apply to private student loans, as long as the loan was only for educational purposes.

These rules do not apply for simple tuition debts or other educational debts which are not loans. To be a loan, there must have been a transfer of funds and a promise to repay the funds.

**If I file bankruptcy, how may I qualify for the “undue hardship” discharge of student loans?**

After you file bankruptcy, you must file a lawsuit in Bankruptcy Court known as an “adversary proceeding,’ against your student loan creditors and/or the government. Then, you will have to prove your case, through testimony, supporting witnesses, and documents such as financial, educational, employment and other records.

**What will the Bankruptcy Court do after the evidence is presented?**

The court may, of course, either grant or deny discharge. The court may also, however, consider alternatives such as

1. discharge of part of the loans,
2. if there are multiple loans, discharging some but not others,
3. deferring payment, or
4. delaying a final decision to see if conditions either improve or get worse.

Either side has the right to appeal the Bankruptcy Court’s decision to the federal court system.

**Are these cases expensive?**

In most cases, yes. Due to the work involved, private attorneys must normally charge a substantial fee to file an adversary case. It may also be expensive to bring expert witnesses to court. You have to carefully evaluate the costs and the likelihood of success before deciding whether to proceed with this kind of case.

**What if my student loans are not discharged in bankruptcy?**

You will still be responsible for the student loans, even though you have discharged other debts. However, if you don’t have to pay your other debts, your student loan payments may become more manageable.

**What about Chapter 13 – can it help?**

In Chapter 13 bankruptcies, a person proposes a 3–5 year Plan to repay some or all debts, in monthly installments based on the person’s ability to pay. As is the case in traditional (Chapter 7) bankruptcies, Student Loans can only be discharged upon proof of undue hardship.

However, Chapter 13 plans may help you deal with your student loan obligations, even if you cannot discharge them.

Chapter 13 plans often reduce the overall monthly debt burden. While you are making Plan payments, all creditors, including student loan lenders and agencies, must stop collection of debts.

Depending on the size of your student loans and your ability to pay, the Chapter 13 Plan may pay off all or part of the student loans. If you still owe part of the student loans when the Plan is completed, payment of your student loan will resume at that time.

**Are there other ways to get relief from student loans besides bankruptcy?**

Yes – student loan lenders and agencies have programs available to provide relief from student loans burdens, such as temporary deferments (postponement) of payment, forbearance, payment programs based on income, consolidation of debts, and reduction of monthly or total payments. There is also public service and career-related cancellation of student loans.

Finally, there are programs for cancellation of student loans the basis of disability or other grounds – see our separate article, Cancellation of Student Loans, for more details.

**Where can I find more information?**

The National Consumer Law Center has an excellent website which discusses your rights with respect to student loans, and relief available in or outside of bankruptcy. See Student Loan Borrower Assistance, [http://www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org/)

There is also information about student loans at the US Department of Education Federal Student Aid website. [http://studentaid.ed.gov](http://studentaid.ed.gov/). You can find out what type of student loans you have by going to the National Student Loan Data System: <http://www.nslds.ed.gov/nslds_SA> .