

Can I eliminate my student loans in bankruptcy?

Probably not. Most unsecured garden variety loans can be wiped out, or “discharged” in a bankruptcy. This means that the bankruptcy court enters an injunction on the collection of the debt from your person. In other words, your personal responsibility for the loan is eliminated. (Creditors still may have their rights to any collateral that secures the loan.) However, despite not all unsecured debts are dischargeable. Student loans are one of the types of obligations that are (almost) non-dischargeable. The student loan exception appears in Section 523(a) (8) of the bankruptcy code. The exception applies to:

- an educational benefit, overpayment or loan, made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution; or
- for an obligation to repay funds received as an educational benefit, scholarship or stipend; or
- any other education loan that is a qualified education loan, as defined in section 221(d)(1) of the federal tax code.

Without traversing the different laws that define the scope of the definition of a student loan in the bankruptcy code, suffice it to say, it is really almost any loan related to education. Including even books, supplies, transportation expenses, etc. as long as they are incurred by eligible students to attend eligible education institution, which is almost any education program.

It is possible to discharge student loans if they represent an “undue hardship.” However, this is been construed by the courts to be a very, very high hurdle. It must be compelling. The burden is on the debtor, the person seeking discharge. *In re Kopf*, 245 B.R. 731(Bankr. D. Me. 2000). It has been said that some courts are so strict that the debtor must be severely disabled to even be considered. However, there are different competing tests the courts can apply. One of the most popular is the “totality of the circumstances.” Some of the factors are: “the debtor’s past, present, and reasonably reliable future financial resources; 2) calculation of the debtor’s and his dependents’ reasonable necessary living expenses; and 3) any other relevant facts and circumstances surrounding that particular bankruptcy case.” *In re Andresen*, 232 B.R. 127, 139 (B.A.P. 8th Cir. 1999).

A practical consideration is how to afford to present the argument in the first place. First, one must file the bankruptcy, which theoretically can be done pro se in payments or possibly even waived. However, most people file using the services of an attorney, which is wise, but comes with a cost. Then after the bankruptcy is filed, an adversary proceeding must be filed. This is essentially a separate law suit in the bankruptcy case. Also, presentation of an undue hardship argument is not a simple endeavor. Facts must be gathered and analyzed. An argument must be developed, research must be done, and it must be thought through. Not to mention the creditor may pose a worthy opponent. So, if you are wondering if you can discharge your student loans, know that you face a high hurdle and significant practical considerations.

Contact: George E. Bourguignon, Jr.

(413) 746-8008

gbourguignon@bourguignonlaw.com

www.bourguignonlaw.com

Can I discharge my student loans in bankruptcy? Student loans in bankruptcy. How are student loans treated in bankruptcy? Can bankruptcy stop my student loans? Can bankruptcy wipe out my student loans? Can bankruptcy eliminate my student loans? Can bankruptcy eliminate student loans?