

Objections to a Discharge of Debt in Bankruptcy

by Windtberg & Zdancewicz, PLC on September 5, 2013



If a creditor in a bankruptcy disputes the discharge of certain debt(s), that creditor may file an adversary complaint with the bankruptcy court within 60 days after the Meeting of Creditors. Filing an adversary action to determine the dischargeability of a debt in bankruptcy is a case within the bankruptcy proceeding. The creditor will file the complaint, the debtor will file an answer, there will be discovery and then the case will proceed to trial. If the judge rules that the debts will not be discharged, repayment is required. Adversary proceedings may also be settled before they go to trial.

The Federal Bankruptcy Code details the circumstances under which some debts may not be discharged. Some common grounds for creditor objections include:

- The debtor received a discharge in a Chapter 7 bankruptcy any time within the past eight years
- The debt is a priority debt, such as court costs, alimony, child support, restitution, and government-issued fines
- The debt consists of federal and/or state income taxes due for the past three years, or for taxes paid late in other years
- The debtor intentionally falsified a tax return, loan application, or other financial statements
- Certain credit card cash advances and charges made by the debtor within specific periods before a bankruptcy filing
- Costs and damages relating to destructive or vindictive conduct by the debtor, such as damage to real property or DUI

The Bankruptcy Trustee may also file objections, for reasons including:

- Failure of the debtor to keep and produce adequate financial records
- The debtor does not fully disclose assets
- The debtor destroys assets within a specified period before or during the bankruptcy filing or proceeding
- Failure of the debtor to obey bankruptcy court orders

There are two types of objections to discharge:

1. Objection to Discharge of a Particular Debt (Section 523)

A creditor can object to the discharge of his or her particular debt, which may be granted despite all other debts in the bankruptcy being discharged.

2. Objection to the Discharge of All Debts (Section 727)

A creditor or the U.S. Bankruptcy Trustee can object to the debtor's discharge of all debt in the bankruptcy. Usually, this objection is based on fraud committed by the debtor in connection with the case. If a debtor is convicted of bankruptcy fraud, not only will the court deny the discharge of debt, but the debtor may also face criminal charges and prison time.

If you would like more information about Objections to Discharge and other adversary proceedings in bankruptcy, creditors' rights, or if you need assistance from an attorney, **contact [Windtberg & Zdancewicz](#) to schedule an initial consultation.**

The attorneys at [Windtberg & Zdancewicz, PLC](#), provide clients with experienced legal representation in all collection matters. We are experienced in creditor's rights including garnishments, charging orders, attachment, property execution, trustee's sales, foreclosures, judgments, judgment collection, domestication of foreign judgments, and creditor's issues in bankruptcy cases. If you need assistance with your collection matters, please contact us at [\(480\) 584-5660](#).

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