



TAMPA BAY BANKRUPTCY CENTER, P.A.

PHONE: (813) 200-4133

TOLL FREE: (800) 965-5074

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Understanding the Bankruptcy Hardship Discharge

When your bankruptcy is discharged it means you have successfully exited bankruptcy protection and you can start afresh financially. Discharges in bankruptcy take place under different circumstances. For each discharge, certain criteria must be met. Usually, this has to do with meeting financial obligations by the debtor in paying off his or her debts.

For example, a discharge in Chapter 7 bankruptcy happens when all non-exempt assets are liquidated to pay off your debts. Any other debts that are still outstanding after liquidating all non-exempt assets are generally forgiven. It is for this very reason that it is not easy to qualify for Chapter 7 bankruptcy. Only if your household income is below the median household income set by your state can you be eligible to apply for Chapter 7 bankruptcy. Otherwise, an applicant for Chapter 7 bankruptcy must take and pass a means test.

If you do not pass the means test, chances are you would be eligible for Chapter 13 bankruptcy. Chapter 13 bankruptcy is where you pay off your debts according to a payment plan approved by the bankruptcy court. This payment plan is meant to be affordable to the debtor to enable him or her to pay debts according to the bankruptcy trustee's prioritization schedule. Discharge from Chapter 13 bankruptcy comes about when the debtor keeps to the payment plan and pays off all the debts according to plan.

But what if despite the payment plan, you still cannot afford to keep up with the installments? The bankruptcy trustee will revise your payment plan to make it more affordable but sometimes due to unavoidable circumstances like a drastic drop in financial income, no payment plan is going to work.

This is where hardship discharge comes in. The debtor can seek to file for a hardship discharge. In order to be granted a hardship discharge, the debtor must have at least paid some amount towards the payment plan, typically at least the amount they would have paid if they had filed a Chapter 7 bankruptcy. If the bankruptcy judge is satisfied with the payments made thus far, a hardship discharge may be granted under the circumstances. The rationale behind it is that if the person were to transfer to a Chapter 7 from their Chapter 13 they would be unfairly subject to seizure of their assets, which is more than they would have been required to pay under either chapter.

The only other option besides a hardship discharge is to cancel the Chapter 13 bankruptcy and file for Chapter 7 instead.

In any case, the best thing to do would be to discuss these options with an experienced bankruptcy attorney. If you wish to speak to a bankruptcy attorney on your situation, call us at (813) 200 4133 for a free consultation.