

I Received a Complaint Asking that a Debt Be Declared to be Non-Dischargeable...

What should I do?

When you file a bankruptcy case, certain types of debts are non-dischargeable ... that is, your bankruptcy won't get rid of them. See the Article entitled "What Debts are Non-Dischargeable." Some of these debts are automatically non-dischargeable (child support / alimony / student loans / priority taxes). Other types of non-dischargeable debts require the Creditor who claims that the debt is non-dischargeable to file a separate lawsuit against you in the bankruptcy court where they attempt to prove or show the court that their debt is of a type that is non-dischargeable. They would start this separate lawsuit by filing a "Complaint" with the Bankruptcy Court and mailing you a copy of that Complaint. Typically, these cases are ones claiming that you stole money, misrepresented something in obtaining the money or debt, or committed fraud in order to get the money or debt.

Please understand that your failure to pay a debt is not fraud. However, if you lied on the application or otherwise misrepresented your circumstances at the time you got the debt, it may be considered fraud. Also, if you used money that was entrusted to you (and really wasn't yours), that is typically fraud. It is the Creditor's duty to prove to the Court that the money or debt was obtained by you using fraud. Still, if the creditor has filed a Complaint with the Court, chances are that he or she thinks that they can prove it.

If you receive a Complaint, you'll want to file an Answer to that Complaint and defend against the claims made by the person who filed it. Generally, you have 20 days to file any answer you desire with the Court. In most cases, you will want to hire an attorney to help defend you as these cases can get quite complicated. Eventually, the Court will schedule a trial where testimony will be taken and the Court will decide whether the debt was fraudulent or not. If you know that the debt will be held non-dischargeable, you may still want to defend and let your attorney attempt to negotiate a settlement that is acceptable to you. This may involve setting up a monthly payment plan of some sort.

In many cases, the attorneys who prepared your original bankruptcy case will not take these types of cases. This is a separate lawsuit and is NOT part of your bankruptcy filing. However, your previous attorney can likely give you a list of attorneys who do handle these types of cases. **BE SURE TO** look for an attorney early on and don't wait till after the deadline for filing your answer. Be prepared to pay additional attorney fees to the new attorney. If you fail to file an Answer on time, the person filing the Complaint will simply get the Default Judgment and Order that he or she requested and the debt will be deemed to be "non-dischargeable" – even if you could have defended against it (or even if you would have won had you fought it). Once a default judgment is entered ... it's over. The creditor has won. **DON'T LET THAT HAPPEN.**

If the debt is truly non-dischargeable, you will still owe it even after the bankruptcy is completed. The Creditor will then be able to take normal collection efforts by trying to garnish