

STUDENT LOAN DISCLOSURE AND INFORMATION

In general, student loans are not dischargeable in a bankruptcy case. This includes any and all private or government loans (whether government guaranteed or not) that were either designated as a “student loan” or which were used and applied for with the purpose of paying tuition, room and board, books, or other funds directly used for educational purposes. This is true regardless of whether or not you complete the program you enrolled in. Thus, a private loan from a “Truck Driving School” constitutes a student loan. There are only a very few exceptions – as where a school goes out of business before the classes can be offered.

There are a few instances where a student loan can be discharged based upon “hardship.” However, this involves filing a separate lawsuit in the Bankruptcy Court and proving that your circumstances are such that there is no possible expectation that you will ever be able to pay your loan back or make any reasonable payments on it. In general, this is referred to by most attorneys as the “loss of all four limbs with head trauma” rule. In other words, the standard that must be proven to the court is very high and seldom granted. This firm does not do this type of work and if you believe your loan might be discharged due to a hardship, you will need to find separate counsel to pursue this work. Due to the difficulty (well – often impossibility) of winning these types of cases, there are very few attorneys willing to take on this type of work.

If you file a Chapter 7 case, your student loans will be in legal “deferment” from the date that your case is filed until the date you receive your Discharge and your case is closed. This typically takes 4 to 6 months. After this period is up, the student loans will go back into payment status (unless you have other reasons for a deferment). Note that interest will still continue to accrue during the deferment period. **THE LOAN WILL NOT GO AWAY!** You are better off trying to work with them as best you can.

If you file a Chapter 13 case, your student loan will be in deferment during the entire 36 to 60 months that you are actively making your Chapter 13 Plan payments. The Chapter 13 Trustee will not allow you to include the funds necessary to make regular payments to these loans in the budget that you file to determine your plan payments. However, if the Student Loan creditor files a proof of claim in your case, they will receive a proportionate share of the funds that your plan pays to Class IV (unsecured) creditors. Thus if your plan is paying 10% of your unsecured debt, your student loans will also receive an amount over the life of the plan equaling 10% of the amount due at the time your case was filed. However, any remaining amounts (including accrued interest) will still be owed when your plan is completed. At that time, you should contact the student loan lender and work out a new payment plan for the remaining amounts owed. Should you have additional money available during your plan payment period, you are free to make payments to the student loan lender and such payments may help to offset the interest that is simply accruing against your account while you are in the Chapter 13 Plan.

Note that if you stay in contact with your student loan lender after your case is completed, they will work better with you. There are numerous payment plans that may be available including ones based upon your current income. As long as you are not in default (ie. failed to make payments when the loan was NOT in deferment), they will work with you as best they can. Note that this firm does not negotiate or deal with student loans on your behalf.