

faq on bankruptcy

How are debts classified in bankruptcy?

Debts are divided into two categories: dischargeable and non-dischargeable.

Dischargeable debts are those that the debtor is no longer personally liable to pay after the bankruptcy proceedings are concluded.

Non-dischargeable debts are those that are not canceled because of the bankruptcy proceeding. This means that you must pay these debts even if you declare bankruptcy.

What is a "discharge" in bankruptcy?

A "discharge" in bankruptcy means that you are legally free and clear of any obligation to repay the debt. It simply goes away. The creditor no longer has any right to collect the debt. The debtor no longer has any obligation to repay it.

When is the discharge issued?

In a Chapter 7 bankruptcy, you normally receive a discharge just a few months after the petition is filed.

In a Chapter 13 bankruptcy, the discharge typically occurs when you have successfully finished repaying the debts that are not discharged.

Can all debts be discharged in bankruptcy?

No. This is why it is important to consult with a bankruptcy attorney if you are considering filing. Depending on your circumstances, bankruptcy may or may not make sense for you. Why declare bankruptcy if you will be no better off than you were before?

So which Debts are Dischargeable in Bankruptcy?

The most common debts that you may get rid of are:

Back rent

Utility bills

Some court judgments

Credit and charge card bills

Department store and gasoline company bills

Loans from family and friends

Newspaper and magazine subscriptions

Legal, medical and accounting bills

Most unsecured loans (e.g. debts for which there is no collateral)

Which debts are not discharged in bankruptcy?

In general, liens (such as mortgages and security interests in cars) are non-dischargeable as are some other types of obligations including:

Federal, state and local tax claims (subject to specific time rules)

Customs duties

Spousal support

Child support

Most student loans

Secured debts

Fines and penalties imposed by government agencies

Debts incurred due to false statements made with the intent to deceive

Fraud committed in a fiduciary capacity, such as embezzlement or larceny

Punitive damage claims for "willful and malicious" acts

Debts not listed on the forms filed with the Court

Drunk driving obligations

A non-dischargeable debt is one that will survive the bankruptcy proceeding. The debtor will still have the obligation to pay this debt; the creditor has every right to collect.

Suppose the person filing bankruptcy committed fraud - would the debts be discharged in bankruptcy?

No. [The Bankruptcy Code](#) has long prohibited debtors from discharging liabilities incurred on account of their fraud, carrying forth a basic policy of affording relief only to an "honest but unfortunate debtor."

Can a creditor ask a debtor to pay a dischargeable debt anyway?

Yes. Even after it has been discharged a creditor may ask a debtor to repay a debt. It's called reaffirming the debt. There are a few reasons why a debtor may agree to this.

There may be a co-signer or guarantor of the debt (such as a family member, friend or employer) that the debtor does not wish to leave saddled with the debt.

A debtor may want to reaffirm a debt in order to avoid having a secured creditor take the collateral provided for the debt.

A creditor may also ask a debtor to reaffirm the debt before he (the creditor) will agree to do business with the debtor again.