

BROWN BAG LUNCH AND LEARN – Part III
Discharge and Dischargeability

NOTES

I. Chapter 7

- A. Objections to Discharge – Discharge may be denied if the debtor fails to complete a personal financial management course of the kind described in § 111 sometime after the filing of the petition. § 727(a)(11).

- B. Revocation of Discharge – A discharge may be revoked if the debtor fails to satisfactorily explain a material misstatement in an audit conducted of the schedules and other filings or fails to make available for inspection all necessary documents or other property requested in the conduct of the audit. § 727(d)(4).

- C. Delay/Denial of Discharge – The court must not enter an order of discharge if it determines, after noticing and a hearing, held not more than ten days before the date of the entry of that order, that § 522(q)(1) may be applicable to the debtor and that a proceeding is pending in which the debtor might be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B) (certain securities acts or RICO violations, criminal, intentional, willful or reckless conduct causing serious physical injury or death within previous five years). § 727(a)(12).
Note: See attached text order being used to implement notice/hearing requirement.

- D. Time Between Discharges – The permissible time between discharges in Chapter 7 cases has been extended from six years to eight years. In other words, a debtor may be denied a discharge in a case if the debtor received a discharge in a prior case under Chapter 7, or Chapter 11, commenced within eight years before the date of the filing of the petition. § 727(a)(8).

II. Chapter 11

A. Individual Cases

1. In individual cases, discharge does not occur upon confirmation, but is delayed until completion of all payments under the plan. § 1141(d)(5)(A). Provision is made for the grant of a hardship discharge prior to completion of payments if creditors have received at least as much as they would in a Chapter 7 case and modification of the plan under § 1127 is not practicable. § 1141(d)(5)(B).
2. Delay/Denial of Discharge – The court must not enter an order of discharge if it determines, after noticing and a hearing, held not more than ten days before the date of the entry of that order, that § 522(q)(1) may be applicable to the debtor and that a proceeding is pending in which the debtor might be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B) (certain securities acts or RICO violations, criminal, intentional, willful or reckless conduct causing serious physical injury or death within previous five years). § 1141(d)(5)(C).

- B. Corporate Cases – A corporate debtor does not receive a discharge from a debt incurred by fraud owed to a domestic governmental unit or for a tax as to which the debtor made a fraudulent return or willfully attempted to evade or defeat the tax. § 1141(d)(6).

III. Chapter 12

- A. Condition to Discharge – In order to obtain a discharge, a Chapter 12 debtor must certify that any payments required by a judicial or administrative order or statute for a domestic support obligation due on or before the date of the certification have been paid or, as to amounts due before the date of the filing of the petition, that they have been paid as provided for by the plan. § 1228(a).

- B. Delay/Denial of Discharge – The court must not enter an order of discharge if it determines, after noticing and a hearing, held not more than ten days before the date of the entry of that order, that § 522(q)(1) may be applicable to the debtor and that a proceeding is pending in which the debtor might be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B) (certain securities acts or RICO violations, criminal, intentional, willful or reckless conduct causing serious physical injury or death within previous five years). § 1228(f).

IV. Chapter 13

- A. Conditions to Discharge
 - 1. Debtor must certify that any domestic support obligations payable pursuant to a judicial or administrative order or by statute and due on or before the date of the certification have been paid. As to amounts due before the date of the filing of the petition, such amounts must have been paid as required by the plan. § 1328(a).
 - 2. The court may not grant a discharge to a debtor unless after the filing of the petition debtor has completed a personal financial management course of the kind described in § 111. § 1328(g)(1).
- B. Delay/Denial of Discharge – The court must not enter an order of discharge if it determines, after noticing and a hearing, held not more than ten days before the date of the entry of that order, that § 522(q)(1) may be applicable to the debtor and that a proceeding is pending in which the debtor might be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B) (certain securities acts or RICO violations, criminal, intentional, willful or reckless conduct causing serious physical injury or death within previous five years). § 1328(h).

- C. Scope of Discharge – The scope of the Chapter 13 discharge has been substantially curtailed. The following debts are no longer included in a Chapter 13 discharge: withholding taxes pursuant to § 507(a)(8)(C); taxes for which returns were not filed, filed late or were fraudulent pursuant to § 523(a)(1)(B) or (C); debts incurred by fraud under § 523(a)(2), unscheduled debts § 523(a)(3), fraud or defalcation by a fiduciary, larceny or embezzlement under § 523(a)(4); for restitution or a criminal fine included in a sentence on conviction; and restitution or damages awarded in a civil action as a result of willful *or* malicious injury that caused personal injury or death. § 1328(a)(2)-(4).
- D. Time Between Discharges – The court may not grant a discharge to a debtor if the debtor has received a discharge: (a) in a Chapter 7, 11 or 12 case during the four-year period prior to the filing of the petition; or (b) in a case under Chapter 13 during the two-year period prior to the filing of the petition. § 1328(f).

V. New Nondischargeable Debts – Additions to Section 523

- A. Fraud – The scope of presumptive fraud for debts incurred to purchase luxury goods and services or for cash advances has been expanded. For purposes of debts incurred for the acquisition of luxury goods, the amount is reduced from \$1,225 to \$500 and the applicable period extended from 60 days to 90 days. With respect to cash advances, the amount changed from \$1,225 to \$750 and the applicable time period is expanded from 60 days to 70 days. § 523(a)(2)(C).
- B. Domestic Support Obligation – The Code makes nondischargeable all debts for a “domestic support obligation,” which is a newly defined phrase in § 101(14A). § 523(a)(5).
 - 1. It includes debts incurred before, on or after the date of the order for relief and interest that accrues on any such debt.

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2. It includes debts: (a) owed to or recoverable by a spouse, former spouse or child's parent, legal guardian or responsible relative, or a governmental unit; (b) in the nature of alimony, maintenance or support; (c) established or subject to establishment before, on or after the date of the order for relief, by a separation agreement, divorce decree, property settlement agreement, court order or determination made by a governmental unit; and (d) not assigned to a non-governmental entity, unless assigned voluntarily for the purpose of collection.
- C. Student Loans – Scope of the student loan exception is expanded to include any educational loan constituting a qualified education loan as defined by the Internal Revenue Code. § 523(a)(8)(B).
 - D. Debts incurred to pay taxes to governmental units other than the United States are also nondischargeable. § 523(a)(14A). This expands the previously existing exception, which included only debts incurred to pay taxes to the United States.
 - E. Non-support Debts – Obligations owed to a spouse, former spouse, or child of the debtor, not included in the definition of domestic support obligations, and incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other court order are nondischargeable. § 523(a)(15). The previous two-prong test which would permit a debtor to obtain a discharge of such debts by demonstrating inability to pay or that the discharge would result in a benefit to the debtor that outweighed the detriment to the creditor has been eliminated. Reference to these debts has also been deleted from § 523(c).
 - F. Debts owed to a pension, profit sharing, stock bonus or other plan are now nondischargeable. § 523(a)(18).