

Are there any debts I cannot discharge in Chapter 7 bankruptcy?

Perhaps one of the most common questions I receive as a bankruptcy attorney is, "What debts are not dischargeable in bankruptcy?" The Bankruptcy Code clearly states debts such as student loans; most federal, state, and local taxes; money borrowed on a credit card to pay those taxes; and domestic support obligations such as maintenance or child support are non-dischargeable.

There are additional debts which may be non-dischargeable, but only if a creditor files a formal objection to discharge of the debt. Debts stemming from marital settlements or divorce decrees; debts incurred by fraud; debts from willful and malicious acts directed towards another person or that person's property; debts arising from DUI/DWI; and debts associated with embezzlement, larceny, or a breach of fiduciary responsibility can be deemed non-dischargeable upon an Application to and an Order from the Bankruptcy Court.

The Bankruptcy Code also states that credit purchases owed to a single creditor for luxury goods that exceed \$500 which were procured within ninety days prior to the bankruptcy filing are "presumed" to be non-dischargeable. However, this accusation can be rebutted by the debtor if it can be proven that he or she intended to repay the creditor or that the purchases were not actually luxury items. Without rebuttable proof from the debtor, the Court may deem such debts non-dischargeable. In addition, if the debtor files bankruptcy after the ninety day period, the presumption shifts and it now becomes the creditor's burden to prove the filing was in bad faith.

Cash advances above \$750 received within seventy days prior to the bankruptcy filing are also "presumed" non-dischargeable. The burden to rebut this accusation rests on the debtor. Again, if however, the debtor files bankruptcy after the seventy day period, the burden of proof shifts to the creditor. This does not mean the debtor is in the clear, although, it does make things more difficult for the creditor.

Debtors, who have received a cash advance or purchased luxury goods within the statutory time period, usually wait until the seventy or ninety days have passed, assuming liability has been avoided. Kicking the can down the road in this manner does not guarantee a successful outcome. Without experienced bankruptcy counsel, debtors may be woefully unprepared should a creditor file papers seeking the Court's intervention. The best practice is to have an experienced bankruptcy attorney poised to respond. A timely and aggressive response will often yield a positive Court ruling or a discounted settlement.

Please feel free to call our office and schedule a consultation with one of our seasoned professionals or email me directly at mdaniels@kirschenbaumesq.com. Nothing would please us more than helping you get the fresh start that you so readily deserve.

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About the Author: Marc W. Daniels, Esq. is a bankruptcy attorney who has represented scores of consumer bankruptcy clients over the last twelve years. Prior to his association with Kirschenbaum & Kirschenbaum, P.C., Mr. Daniels worked at a boutique bankruptcy firm located in Melville, New York where he specialized in Chapter 7 and Chapter 13 Bankruptcy, Debt Negotiations, Mortgage Modifications, and Residential Foreclosure Defense. Mr. Daniels was born and raised on Long Island and is proud to serve the community he and his family have called home for over fifty years.