

## **DISCHARGE OF DEBTOR**

The discharge is a court order that grants a discharge of debts to the person named as the debtor. This Official Form covers only an individual debtor in a chapter 7 case. There are other procedural forms issued by the Director of the Administrative Office of the United States Courts for use in cases filed by joint debtors (husband and wife filing together) and in chapter 12 and chapter 13 cases. These forms are posted separately at <http://www.uscourts.gov/bkforms/> under the heading “Procedural Forms and Instructions.”

The effect of a discharge order is to free the debtor of any personal liability for most debts that arose before the bankruptcy case was filed. It is not a dismissal of the case, and it does not determine how much money, if any, the trustee will pay to creditors.

The clerk will prepare the order of discharge in the case. These instructions are provided for the information and reference of parties in a bankruptcy case.

### **I. APPLICABLE LAW AND RULES**

The chapter 7 discharge order eliminates a debtor's legal obligation to pay any debt that is discharged. Most, but not all, types of debts are discharged by law if the debt existed on the date the bankruptcy case was filed. 11 U.S.C. §§ 524, 727(b). (If the case began under a different chapter of the Bankruptcy Code and was converted to chapter 7, the discharge also applies to debts that existed on the date the bankruptcy case was converted. See 11 U.S.C. §§ 348(d), 727(b).)

By law, the discharge prohibits any attempt to collect from the debtor a debt that has been discharged. 11 U.S.C. § 524(a)(2). For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. There are also special rules that may protect certain “community property” owned by the debtor's spouse, even if that spouse did not file a bankruptcy case. 11 U.S.C. § 524(a)(3). A creditor, however, may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. 11 U.S.C. § 362(c).

Even if a debt has been discharged by law, a debtor may still choose to pay it voluntarily. 11 U.S.C. § 524(f).

Although most of the debtor's debts are discharged, some types of debts are not discharged in a chapter 7 bankruptcy case. Some of the common types of debts that are not discharged are set out on the back of the discharge. The types of debts discharged in a chapter 12 or chapter 13 case vary somewhat from those discharged in a chapter 7 case. 11 U.S.C. §§ 1228, 1328.

Individual debtors in chapter 7 and chapter 13 cases and certain individual debtors in chapter 11 cases are required to complete a course in personal financial management before receiving a discharge. 11 U.S.C. §§ 727(a)(11), 1141(d)(3), 1328(g). The course must be approved by the United States trustee or the bankruptcy administrator. 11 U.S.C. §§ 111, 727(a)(11), 1328(g). Individual debtors in a chapter 7 case must file a statement regarding completion of the course within 45 days after the date first set for the meeting of creditors. Bankruptcy Rule 1007(b)(7), 1007(c). Official Form 23, Debtor's Certification of Completion of Instructional Course Concerning Financial Management, is used for that purpose. The court may close the case without issuing a discharge if the debtor has not filed the certification by the time to grant the discharge. Rules 4004(c)(1)(H).

The clerk is required to send a copy of the discharge order to the debtor, the debtor's attorney, all creditors, the United States trustee, the trustee, and the trustee's attorney, if any. Rule 4004(g). If case is closed without the entry of a discharge, the clerk informs the debtor, the debtor's attorney, all creditors, the United States trustee, the trustee, and the trustee's attorney, if any. Rule 4006.

**This information is only a general summary of the bankruptcy discharge, and there are exceptions to these general rules. The law is complicated, so debtors and creditors may want to consult an attorney to determine the exact effect of the discharge in any particular case.**

## II. DIRECTIONS

1. The Official Form should be used in a chapter 7 case in which the debtor is an individual. (The Director of the Administrative Office of the United States Courts has issued other procedural forms, which are adaptations of Official Form 18, for use in cases filed by joint debtors and in chapter 12 and chapter 13 cases. These forms are posted separately at <http://www.uscourts.gov/bkforms/> under the heading "Procedural Forms and Instructions".

2. The caption of the discharge should conform to Official Form 16A. Instructions for Official Form 16A, Caption (Full), are posted with that form.

3. The clerk will enter the discharge order on the bankruptcy case docket and mail a copy of the discharge order to the debtor, the trustee, the trustee's attorney (if any), the United States trustee, and all creditors.