Some Debts Don't Die Easy: Arizona Bankruptcy Attorney

By Arizona Bankruptcy Attorney John Skiba

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In bankruptcy all debts are not treated equally, and sometimes, a creditor can petition the bankruptcy court to have its debt treated differently than other similar-type debts. For most, particularly those filing a chapter 7 bankruptcy, the bankruptcy process is pretty straight forward with few surprises. The typical chapter 7 bankruptcy begins when your case if filed with the bankruptcy court, you attend a meeting with your trustee, and then a few months later the discharge order is entered by the bankruptcy court eliminating your debts. However, some creditors are not so willing to accept their fate, and come out swinging.

The issues that arise most frequently in a bankruptcy are motions for relief from stay and determining the dischargeability of a particular debt.

Motions for Relief From Stay

As I have written about in the past, secured creditors (like car & house loans) are treated differently in bankruptcy than unsecured debts (like credit card and medical bills). Whether you are in a chapter 7 bankruptcy or a chapter 13 bankruptcy, once your case is filed with the bankruptcy court you are required to make the monthly payment as it comes due on the secured debt. So, if you haven't been making a car payment or a house payment, once you file for bankruptcy it is expected that you will begin making that payment if you want to keep the asset. If you do not make the monthly payment, or if you are severely delinquent on your monthly payments, the secured creditor can file a motion asking the court to take away the protective stay it issued when your bankruptcy case was first filed.

The protective stay –called the "automatic stay"– stops collection efforts against you and your property. It stops trustee's sales, garnishments, and law suits. However, a secured creditor that is not getting paid can ask the court to lift or remove the automatic stay as to their specific collateral. The process in removing the automatic stay begins with the filing of a written brief with the bankruptcy court called a Motion to Lift Stay. If you do not object to this motion the secured creditor can obtain an order lifting the automatic stay about two weeks later. Once removed the secured creditor can then proceed to foreclose on a home or repossess a car.

Dischargeabililty

The purpose in filing bankruptcy is to obtain a discharge order from the bankruptcy court that eliminates your debts. However, the bankruptcy code provides that certain debts are not discharged through the bankruptcy process. Armed with these code sections a creditor can file a complaint with the bankruptcy court asking it to deem their specific debt "non-dischargeable" meaning that it will not go away through the bankruptcy process. The most common types of debts that may be non-dischargeable are:

- Student Loans
- Taxes
- Child Support
- Alimony
- Debts Incurred Through Fraud

There are many other types of debts that may be deemed non-dischargeable. For most debts, other than taxes and student loans, it will require that the creditor petition the bankruptcy court to make a determination that a specific debt is non-dischargeable.

While most bankruptcy cases proceed very smoothly, there are those cases where a creditor can cause some havoc. The good news is most of these situations can be handled in a satisfactory manner and you can still obtain your discharge.

Arizona bankruptcy attorney John Skiba offers a free bankruptcy consultation. He can be reached at (480) 464-1111.