

Back to School in Arizona: Student Loans and Bankruptcy

By John Skiba, Arizona Bankruptcy Attorney

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Well, it is that time of year here in Arizona and my kids are headed back to school. With schools and universities starting all over the country, many people are looking into student loans and figuring out how to finance their education. Along those lines I wanted to write on how student loan debt is dealt with in [bankruptcy](#).

Student Loans Typically Not Discharged in Bankruptcy

Student Loans have enjoyed being treated differently than most [unsecured](#) debts in bankruptcy. Traditionally, student loan debt received from a governmental agency is not [discharged/eliminated](#) through the bankruptcy process. Back in 2005 when the Bankruptcy Code was revised, student loan debt received additional protections and now even private student loans that were taken out solely for higher educational purposes are generally not discharged in bankruptcy.

Exception to the Rule- Undue Hardship

Bankruptcy courts will look at an individual's specific situation (if asked) to determine whether requiring a person to repay student loans would pose an "undue hardship." In determining whether there is an undue hardship the bankruptcy court will look to see if three factors are present:

1. If required to pay the student loan debt you will not be able to maintain a minimal standard of living for you and your family;
2. It is likely that your inability to repay the student loan debt is going to continue for a significant portion of the repayment period of your student loan; and
3. You have made a good faith effort to repay the loan in the past.

The application of this standard has been pretty rigorous and the bar has been set fairly high. During law school I worked as an extern for the bankruptcy court in Las Vegas. I remember one trial that took place where an attorney who had been in a car accident had sustained paralysis from the middle of the chest down. She sought to have her student loans discharged because it was now very difficult for her to work and earn the money she had been making. After a three day trial the court ruled that half of her student loan debt would be discharged and that she would be required to repay the other half as she was not so incapacitated that she could not make a living and repay a portion of the loans.

I often use that example for clients wanting to discharge student loans in their bankruptcy to illustrate that it is very difficult to eliminate student loan debt in bankruptcy.

Chapter 13 Bankruptcy Can Delay Payment on Student Loans

One benefit to a [Chapter 13 bankruptcy](#) is that while you are your Chapter 13 repayment plan, your student loans are put into a deferment of sorts where you are not making direct payments to your student loan lender. For some who are paying large monthly payments on their student loans, having a 3 to 5 year period of not being required to pay your student loans can help with other debt problems.

I offer a free bankruptcy consultation where we can evaluate your debt problems and help you determine if your student loan debt could be discharged through the bankruptcy process. If you would like to become debt free, I can be reached at (480) 420-4028 or via email at john@skibalaw.com .