

**CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO**

Obtaining a General Discharge

Debts vs. Liens. The goal of every individual filing a chapter 7 bankruptcy case is to obtain a general discharge of debts. When a debt is discharged, the debtor's personal obligation to repay the debt is extinguished or "forgiven." This does not mean that liens against the debtor's property are also extinguished. In fact, unless there is a specific court order to the contrary, liens will survive the bankruptcy. For example, assume the debtor owns a home worth \$300,000 and owes the bank \$350,000 on the mortgage. By filing bankruptcy, the debtor will no longer have a legal obligation to pay the mortgage. If the debtor does not make payments, the bank will exercise its rights to foreclose on the home (either after the bankruptcy case is over or during the bankruptcy case if it gets court permission to do so first). But that is all that the bank can do (unless the debtor has reaffirmed the debt as explained above). It can foreclose the home and resell it to realize \$300,000, but it cannot try to collect the additional \$50,000 of debt from the debtor.

Non-Dischargeable Debts. Not all types of debts are forgiven in bankruptcy. Section 523 of the Bankruptcy Code lists nineteen types of debts that Congress has determined should not be forgiven. Some of these are excepted from discharge because they are the result of wrongdoing on the part of the debtor, such as a debt arising from the debtor's acts of fraud or willful and malicious conduct that caused injury to another. Other types reflect a policy choice to protect a certain type of creditor, such as an ex-spouse owed domestic support or taxing authorities. If bankruptcy eliminated all tax debts, everyone would file for bankruptcy and then who would pay for roads, policemen, and firefighters?

Sometimes it is not clear whether a particular debt falls within one of these categories of non-dischargeable debts. Either the debtor or the creditor may bring a lawsuit in the bankruptcy court (an "adversary proceeding") to determine whether the debt has been forgiven or not. With three specific types of debts, an adversary proceeding to determine dischargeability *must be filed by a strict deadline*. This involves debts for fraud (§ 523(a)(2)), for fraud or defalcation by a fiduciary, larceny, or embezzlement (§ 523(a)(4)), and for willful and malicious injury (§ 523(a)(6)). Unless extended by court order, a creditor must initiate an adversary on these three types of debts no later than sixty days from the date first set for the debtor's meeting of creditors.

No Discharge of Any Debts. Finally, a creditor or trustee may initiate an adversary proceeding by the same deadline to determine that the debtor should be denied a discharge of any debts. Section 727 of the Bankruptcy Code governs this type of action. Generally, this remedy is available only when the debtor has taken actions, usually post-bankruptcy, that impugn the integrity of the bankruptcy process itself. These include hiding assets, falsifying bankruptcy schedules, failure to obey court orders, failure to explain a sudden loss of assets, and the like.