

About me:

I've been practicing law for 6 years. Before going to law school I worked at Dakota County as a child support specialist. I found family law to be extremely fascinating and that prompted me to become a lawyer. After law school, I was having a hard time finding a job in family law, so I started working at Prescott & Pearson doing bankruptcy and I loved it. I stayed there for 5 years, and earlier this year I took a job that would allow me to practice in family law and bankruptcy at the firm JP Hoffman Law Offices in Faribault. Our firm does all areas of law, including estate planning, criminal, personal injury, real estate, and family law and bankruptcy.

Bankruptcy Basics and Definitions:

Operates under United States Bankruptcy Code. The Bankruptcy Code is federal law, so it doesn't vary from state to state.

Chapter 7 – also called a liquidation.

- 90 days long
- No payments, debt is completely wiped out.
- Debtors usually have less income and less assets than a chapter 13 debtor
- Can only file once every 8 years

Chapter 13 – also called repayment.

- Up to 5 years long
- Monthly payments based on a plan filed with the court
- Debtors usually have a higher income or assets with significant value
- Less limitation on the frequency of filings

Discharge

Discharge means a successful completion of a bankruptcy. It means that all of the debts that are dischargeable, are now gone. If your debt is not dischargeable, it survives the bankruptcy.

Stay

As soon as a bankruptcy is filed, there is a stay imposed on all of the creditors. The stay requires that all creditors cease any kind of collection or contact with the debtor. A chapter 7 stay is 90 days long, and a chapter 13 stay lasts for the duration of the bankruptcy, however long that may be. Whether or not your debt is dischargeable, you cannot violate the stay.

Estate

Everything that the debtor owns when he or she files a bankruptcy is called the estate. The debtor's assets in the estate are either exempt – which means they are safe from the creditors, or non-exempt – which means the creditors should get a notice from the trustee that there may be some money distributed to them once the bankruptcy is complete.

Trustee

Every bankruptcy has a local trustee appointed to oversee the case. The trustee administers the debtor's estate and it is his or her job to collect non-exempt assets, sell them off, and distribute the money to the creditors. The trustee is not a judge, and he or she does not have any say in whether or not a certain debt is or isn't dischargeable.

Claims

In a case where there is money that will be distributed to creditors, the creditors must file something called a proof of claim in order to get their money. In a chapter 7, the trustee will send you a notice that there is money to distribute, to notify you to file your claim. In a chapter 13, you have 90 days to file your claim after the case has been filed.

How to find out more about the debtor's bankruptcy

You will get a notice called Notice of §341 Meeting of Creditors. It tells you what chapter the debtor filed and when and where the meeting is located. You do not have to go to this meeting to try to protect your debt from being discharged. The trustee has no control over that. The meeting is a chance to question the debtor about assets that he or she might have that haven't been disclosed. If you know that this debtor has significant assets that they haven't disclosed, you might want to go.

To look at all of the documents that the debtor filed, go to www.mnb.uscourts.gov this is the bankruptcy court's website where anyone can access the debtor's information. From there you will click on the case locator, or PACER, as the program is called, and you will have to create an account. PACER charges you when you look up a case or download or print documents, but it is very cheap – ten cents a page, and they stop charging you after 30 pages. Most of the time, bankruptcies are simple chapter 7s, where the debtor doesn't have significant assets – in these situations there's no use in looking up their paperwork. But if the debtor files a chapter 13, it can be useful to look their case up and view their chapter 13 plan. The plan tells you if your debt is listed, and how much you are going to get paid during the course of the bankruptcy. Different debts get different priorities, and some will get paid back 100%, while others might not get paid anything.

Is your debt dischargeable?

I always tell debtors that the following four debts will not be discharged:

1. Most taxes
2. Student loans
3. Child support, or any other debt that is in the nature of child support
4. Criminal charges, or restitution.

These debts are so safe, that a creditor won't have to take any further action to ensure that they will still be able to collect on them. But there are actually a number of debts that can survive a bankruptcy. The following are a few things to consider.

1. When was the debt incurred? The debt must have already been incurred before the file date of the bankruptcy. If the bankruptcy is filed, and then a day later, the debt is incurred, it is not dischargeable and your debt is safe.
2. Section 523 of the bankruptcy code lists the debts that are not dischargeable. There are a few sections that apply to the types of debt that you probably concentrate on.
 - a. 523(a)(7) states: Bankruptcy does not discharge debt ***to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty.***
 - i. Is your debt a fine, penalty, or forfeiture? The courts have determined that if your debt arose to punish the debtor, then it meets this element.
 - ii. Is it owed to the government? As long as you're not forwarding it on to some one else to benefit anyone other than the government.
 - iii. Was it compensation for an actual pecuniary loss? If the money owed to you is to compensate you for money that you lost in dealing with the debtor, then it is actual pecuniary loss and it doesn't meet the elements of this section.
 - b. 523(a)(5) states: Bankruptcy does not discharge debt for a domestic support obligation. This one is easy – if the debtor was ordered to pay something by a family court, it's not dischargeable. Child support, spousal, medical, even if the judge sticks one party with the other's attorney fees, it survives the bankruptcy.
 - c. 523(a)(2) states: Fraud or false pretenses.
 - i. Any overpayment of public assistance or unemployment, or any other assistance that is based on need, when the debtor has a duty to disclose information that makes him or her eligible.
3. Whether or not a debt is dischargeable can be subject to a lot of interpretation of case law and the bankruptcy code. If it doesn't easily fit into one of these categories, be sure to discuss with an attorney or a county attorney to give more in-depth legal advice.

What to do if you think your debt is not dischargeable.

1. File an objection.
 - a. Must be within the 90 days of the active bankruptcy or you're too late.
 - b. See attached "Adversary Cover Sheet" to use to file the objection.
 - c. You will receive a court date to argue in front of a judge.
2. Most bankruptcy attorneys know (or should know) what is and isn't dischargeable and they won't fight your objection.

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS	DEFENDANTS	
ATTORNEYS (Firm Name, Address, and Telephone No.)	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<p>FRBP 7001(1) – Recovery of Money/Property</p> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property <p>FRBP 7001(3) – Approval of Sale of Property</p> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) <p>FRBP 7001(5) – Revocation of Confirmation</p> <input type="checkbox"/> 51-Revocation of confirmation <p>FRBP 7001(6) – Dischargeability</p> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <p style="text-align: center;">(continued next column)</p>	<p>FRBP 7001(6) – Dischargeability (continued)</p> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other <p>FRBP 7001(7) – Injunctive Relief</p> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other <p>FRBP 7001(8) Subordination of Claim or Interest</p> <input type="checkbox"/> 81-Subordination of claim or interest <p>FRBP 7001(9) Declaratory Judgment</p> <input type="checkbox"/> 91-Declaratory judgment <p>FRBP 7001(10) Determination of Removed Action</p> <input type="checkbox"/> 01-Determination of removed claim or cause <p>Other</p> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et. seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR		BANKRUPTCY CASE NO.
DISTRICT IN WHICH CASE IS PENDING	DIVISION OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.