

# Objecting to Dischargeability of Debt: How Creditor May Protect its Debt in Bankruptcy

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Imagine that you are an unsecured lender who has learned that a borrower has filed for bankruptcy and has little to no assets available to pay creditors. Is there any way to prevent your debt from being extinguished? This is a common question and often the answer unfortunately is no; however, if the debtor is an individual and the debt meets certain requirements established by the **Bankruptcy Code**, the court may declare the debt nondischargeable (in other words, the debt will remain with the debtor after the bankruptcy case is closed).

The Bankruptcy Code contains a list of exceptions to discharge, including, in the context of a lending relationship, that the debtor obtained the loan through the use of false pretenses, actual fraud or false financial statements.

**The lender bears the burden of proof for each of these claims, and therefore it is important that the lender's file is well documented.**

To prove that the debtor obtained the loan through the use of false pretenses, the lender will be required to demonstrate that the debtor knowingly made false representations with the intent to deceive the lender and that as a result, the lender suffered damages. Similarly, to prove that the debtor obtained the loan through the use of false financial statements, the lender must prove that the debtor provided the lender with materially false documentation regarding the debtor's financial condition and that the lender relied upon the documents in approving the loan.

If the lender believes it has sufficient grounds to assert a claim objecting to discharge, it must file a complaint against the debtor in the bankruptcy case. There is a fee associated with the filing of such a complaint (currently \$350 in the District of Connecticut). Be aware, however, that this complaint must be filed within 60 days of the meeting of creditors in the debtor's case. The deadline is contained in a notice to creditors which the court issues at the onset of the bankruptcy case. Therefore, if the deadline to object to dischargeability is approaching, and the lender is unclear whether it has the requisite proof to assert a claim, it should file a motion requesting an extension of time to object before the deadline passes.

The filing of the complaint commences what is known as an “adversary proceeding.” The adversary proceeding proceeds in a similar fashion as would any other case filed in federal court (i.e. the parties may serve discovery, file dispositive motions and the bankruptcy court may conduct a trial). If the court awards judgment in the lender’s favor, the debt will be declared nondischargeable and when the bankruptcy case is closed, the lender may seek to collect the debt as it normally would outside of bankruptcy.

The filing of a complaint objecting to the dischargeability of debt can be a lengthy and complicated process and therefore if the lender is considering this course of action, it should consult with its attorney regarding the associated risks and rewards.

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