

E.6 Raising School’s Fraud in Bankruptcy Proceeding

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Add new appendix subsection after Appx. E.6.3:

E.6.4 Complaint to Determine Dischargeability of Student Loan

Form 123 Complaint to Determine Dischargeability of Student Loan¹

UNITED STATES BANKRUPTCY COURT

District of _____

_____)
 In re _____)
 _____)
 [plaintiff] *Debtor*) Case No. _____)
 _____) Chapter _____)
 [plaintiff] *Plaintiff*) Adv. Proc. No. _____)
 _____)
 _____ *Defendant*)
 _____)

Complaint to Determine Dischargeability of Student Loan

1. The Debtor filed this case under chapter 7 of the Bankruptcy Code on [date]. This Court thus has jurisdiction over this action under 28 U.S.C. § 1334. This proceeding is a core proceeding.
2. One of the unsecured debts owing by the Debtor and listed in Schedule F is a student loan owing to Defendant [creditor].
3. The Defendant [director] is the executive director of the [creditor] and is responsible for the overall operation of the guaranteed student loan program.²
4. This loan was incurred to pay expenses at [school].
5. Subsequent to beginning coursework at that school, the Debtor learned that the school had lost its accreditation and that none of its recent graduates had obtained the employment for which they were trained due to that loss.
6. The Debtor was unable to transfer to any other educational program, and was also refused any refund of the tuition paid by the student loan.
7. Since that time, the Debtor has been unemployed, and the sole source of income for herself and her two children has been public assistance in the amount of \$[amount], which barely suffices for the necessities of life.
8. The Debtor has no current or anticipated available income or resources with which to pay the aforementioned loan and any payments on that loan could be made only at great hardship to the Debtor and her children.

WHEREFORE, the Debtor prays that this Court enter an Order declaring the student loan debt of the Debtor to be dischargeable in this bankruptcy case.

Date:

[signature]
Attorney for Debtor

- 1 Both debtors and creditors may seek determinations with respect to the dischargeability of debts, either during or after the bankruptcy (however, there are deadlines for certain creditor complaints. *See* Fed. R. Bankr. P. 4007(c); 11 U.S.C. § 523(c)). Such determinations must be sought by way of adversary proceedings. Fed. R. Bankr. P. 7001. For a discussion of complaints in adversary proceedings, see National Consumer Law Center, *Consumer Bankruptcy Law and Practice* Appx. G.10 (8th ed. 2006) (see notes to Form 100).

Debtors may want such determinations to settle an issue likely to be disputed later, or to obtain an explicit court order enjoining a creditor with whom difficulties are anticipated.

- 2 If the student loan creditor is a governmental entity that may claim Eleventh Amendment immunity, it had previously been desirable to sue named individual officials rather than the entity itself. *See Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). This procedure is no longer necessary as the Supreme Court's decision in *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (2004), now clearly establishes that the debtor may sue the state directly when seeking a dischargeability determination. *See* National Consumer Law Center, *Consumer Bankruptcy Law and Practice* § 13.3.2.2 (8th ed. 2006). However, naming the head of the relevant agency may still be useful for other purposes.